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# *NORTH CAROLINA* *REGISTER*

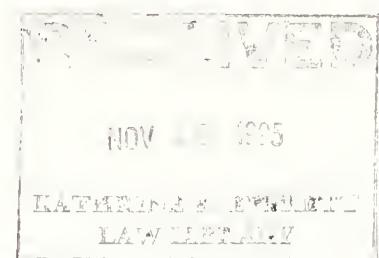
**VOLUME 10 • ISSUE 16B • Pages 1828 - 2026**  
**November 15, 1995**

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Environment, Health, and Natural Resources  
Public Education  
Revenue  
Secretary of State  
Transportation

## **PUBLISHED BY**

*The Office of Administrative Hearings*  
*Rules Division*  
*PO Drawer 27447*  
*Raleigh, NC 27611-7447*  
*Telephone (919) 733-2678*  
*Fax (919) 733-3462*



## INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

### **NORTH CAROLINA REGISTER**

The *North Carolina Register* is published twice a month and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed administrative rules and notices of public hearings filed under G.S. 150B-21.2 must be published in the *Register*. The *Register* will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions.

The *North Carolina Register* is available by yearly subscription at a cost of one hundred and ninety five dollars (\$195.00) for 24 issues. Individual issues may be purchased for ten dollars (\$10.00).

Requests for subscription to the *North Carolina Register* should be directed to the Office of Administrative Hearings, PO Drawer 27447, Raleigh, NC 27611-7447.

### **ADOPTION, AMENDMENT, AND REPEAL OF RULES**

The following is a generalized statement of the procedures to be followed for an agency to adopt, amend, or repeal a rule. For the specific statutory authority, please consult Article 2A of Chapter 150B of the General Statutes.

Any agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing (or instructions on how a member of the public may request a hearing); a statement of procedure for public comments; the text of the proposed rule or the statement of subject matter; the reason for the proposed action; a reference to the statutory authority for the action and the proposed effective date.

Unless a specific statute provides otherwise, at least 15 days must elapse following publication of the notice in the *North Carolina Register* before the agency may conduct the public hearing and at least 30 days must elapse before the agency can take action on the proposed rule. An agency may not adopt a rule that differs substantially from the proposed form published as part of the public notice, until the adopted version has been published in the *North Carolina Register* for an additional 30 day comment period.

When final action is taken, the promulgating agency must file the rule with the Rules Review Commission (RRC). After approval by RRC, the adopted rule is filed with the Office of Administrative Hearings (OAH).

A rule or amended rule generally becomes effective 5 business days after the rule is filed with the Office of Administrative Hearings for publication in the North Carolina Administrative Code (NCAC).

Proposed action on rules may be withdrawn by the promulgating

agency at any time before final action is taken by the agency or before filing with OAH for publication in the NCAC.

### **TEMPORARY RULES**

Under certain emergency conditions, agencies may issue temporary rules. Within 24 hours of submission to OAH, the Codifier of Rules must review the agency's written statement of findings of need for the temporary rule pursuant to the provisions in G.S. 150B-21.1. If the Codifier determines that the findings meet the criteria in G.S. 150B-21.1, the rule is entered into the NCAC. If the Codifier determines that the findings do not meet the criteria, the rule is returned to the agency. The agency may supplement its findings and resubmit the temporary rule for an additional review or the agency may respond that it will remain with its initial position. The Codifier, thereafter, will enter the rule into the NCAC. A temporary rule becomes effective either when the Codifier of Rules enters the rule in the Code or on the sixth business day after the agency resubmits the rule without change. The temporary rule is in effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule must begin rule-making procedures on the permanent rule at the same time the temporary rule is filed with the Codifier.

### **NORTH CAROLINA ADMINISTRATIVE CODE**

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 40 occupational licensing boards. Compilation and publication of the NCAC is mandated by G.S. 150B-21.18.

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page. Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.
- (2) The full publication and supplement service is printed and distributed by Barclays Law Publishers. It is available in hardcopy, CD-ROM and diskette format. For subscription information, call 1-800-888-3600.

### **CITATION TO THE NORTH CAROLINA REGISTER**

The *North Carolina Register* is cited by volume, issue, page number and date. 10:01 NCR 1-67, April 3, 1995 refers to Volume 10, Issue 1, pages 1 through 67 of the *North Carolina Register* issued on April 3, 1995.

# **NORTH CAROLINA REGISTER**



**Volume 10, Issue 16B  
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**November 15, 1995**

This issue contains documents officially filed through October 31, 1995.

Office of Administrative Hearings  
Rules Division  
424 North Blount Street (27601)  
PO Drawer 27447  
Raleigh, NC 27611-7447  
(919) 733-2678  
FAX (919) 733-3462

Julian Mann III, Director  
James R. Scarella Sr., Deputy Director  
Molly Masich, Director of APA Services  
Ruby Creech, Publications Coordinator  
Teresa Kilpatrick, Editorial Assistant  
Jean Shirley, Editorial Assistant

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**NORTH CAROLINA REGISTER**  
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FILING DEADLINES		NOTICE OF RULE-MAKING PROCEEDINGS		NOTICE OF TEXT (either column A or column B)			
volume and issue number	issue date	last day for filing	end of comment period	earliest register issue for publication of text		non-substantial economic impact	
				earliest date for public hearing	end of required comment period	deadline to submit to RRC for review at next RRC meeting	first legislative day of the next regular session
10:17	12/01/95	11/07/95	01/30/96	02/01/96			
10:18	12/15/95	11/22/95	02/13/96	02/15/96			
10:19	01/02/96	12/07/95	03/04/96	03/15/96			
10:20	01/16/96	12/20/95	03/18/96	04/01/96			
10:21	02/01/96	01/10/96	04/01/96	04/15/96	02/16/96	03/04/96	03/13/96
10:22	02/15/96	01/25/96	04/15/96	05/01/96	03/01/96	03/18/96	05/13/96
10:23	03/01/96	02/09/96	04/30/96	05/01/96	03/18/96	04/01/96	04/22/96
10:24	03/15/96	02/23/96	05/14/96	05/15/96	04/01/96	04/15/96	04/22/96
11:01	04/01/96	03/11/96	05/31/96	06/03/96	04/16/96	05/01/96	05/20/96
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11:10	08/15/96	07/25/96	10/14/96	10/15/96	08/30/96	09/16/96	09/20/96
11:11	09/03/96	08/12/96	11/04/96	11/15/96	09/18/96	10/03/96	10/21/96
11:12	09/16/96	08/23/96	11/15/96	12/02/96	10/01/96	10/16/96	10/21/96

**B.**

**A.**

**Substantial economic impact**

first legislative day of the next regular session

## EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2B .0103 and the Rules of Civil Procedure, Rule 6.

GENERAL	FILING DEADLINES	NOTICE OF RULE-MAKING PROCEEDINGS	NOTICE OF TEXT	EARLIEST DATE FOR PUBLIC HEARING:
		<p><b>ISSUE DATE:</b> The Register is published on the first and fifteenth of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month closest to (either before or after) the first or fifteenth respectively that is not a Saturday, Sunday, or holiday for State employees.</p> <p><b>LAST DAY FOR FILING:</b> The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.</p> <p><b>COMPUTING TIME:</b> In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.</p>	<p><b>END OF COMMENT PERIOD TO A NOTICE OF RULE-MAKING PROCEEDINGS:</b> This date is 60 days from the issue date. An agency shall accept comments on the notice of rule-making proceeding until the text of the proposed rules is published, and the text of the proposed rule shall not be published until at least 60 days after the notice of rule-making proceedings was published.</p> <p><b>EARLIEST REGISTER ISSUE FOR PUBLICATION OF TEXT:</b> The date of the next issue following the end of the comment period.</p>	<p>The hearing date shall be at least 15 days after the date a notice of the hearing is published.</p> <p><b>END OF REQUIRED COMMENT PERIOD (1) RULE WITH NON-SUBSTANTIAL ECONOMIC IMPACT:</b> An agency shall accept comments on the text of a proposed rule for at least 30 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.</p> <p><b>(2) RULE WITH SUBSTANTIAL ECONOMIC IMPACT:</b> An agency shall accept comments on the text of a proposed rule published in the Register and that has a substantial economic impact requiring a fiscal note under G.S. 150B-21.4(b) for at least 60 days after publication or until the date of any public hearing held on the rule, whichever is longer.</p> <p><b>DEADLINE TO SUBMIT TO THE RULES REVIEW COMMISSION:</b> The Commission shall review a rule submitted to it on or before the twentieth of a month by the last day of the next month.</p> <p><b>FIRST LEGISLATIVE DAY OF THE NEXT REGULAR SESSION OF THE GENERAL ASSEMBLY:</b> This date is the first legislative day of the next regular session of the General Assembly following approval of the rule by the Rules Review Commission. See G.S. 150B-21.3, Effective date of rules.</p>

**TITLE 15A - DEPARTMENT OF ENVIRONMENT,  
HEALTH, AND NATURAL RESOURCES**

**N**otice is hereby given in accordance with G.S. 150B-21.2 that the Department of Environment, Health, and Natural Resources intends to amend rules cited as 15A NCAC 1C .0101, .0503 - .0504.

**Proposed Effective Date:** February 1, 1996.

**A Public Hearing** will be conducted at 3:30 pm - 5:00 pm on November 30, 1995 at the Archdale Building, Room 917, 512 North Salisbury Street, Raleigh, NC 27604.

**Reason for Proposed Action:** The proposed rulemaking is needed to update, clarify, and improve the identification of thresholds of activity/impact below which an environmental document will not be required under the N.C. Environmental Policy Act (NCEPA). The proposed amendments conform to current statutes and organizational structure, and will reduce the number of environmental documents required for non-major activities.

**Comment Procedures:** Written comments may be submitted to Bill Flournoy, Office of Legislative and Intergovernmental Affairs, PO Box 27687, Raleigh, NC 27611-7687, (919) 715-4191. Written comments will be received until December 30, 1995.

**Fiscal Note:** These Rules do not affect the expenditures or revenues of state or local government funds.

**CHAPTER 1 - DEPARTMENTAL RULES**

**SUBCHAPTER 1C - CONFORMITY WITH NORTH CAROLINA ENVIRONMENTAL POLICY ACT**

**SECTION .0100 - GENERAL PROVISIONS**

**.0101 STATEMENT OF PURPOSE, POLICY, AND SCOPE**

(a) The purpose of the rules in this Subchapter is to establish procedures within the Department of Environment, Health, and Natural Resources (EHNR) for conforming with the North Carolina Environmental Policy Act (NCEPA).

- (1) Rules for implementation of the NCEPA (1 NCAC 25) are hereby incorporated by reference to include further amendments pursuant to G.S. 150B-14(e) 150B-21.6.
- (2) The EHNR's procedures must insure that environmental documents are available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality and sufficient to allow selection among alternatives.

(b) The Secretary is the "responsible state official" for EHNR. The secretary may delegate responsibility for the

implementation of the NCEPA to appropriate staff.

(c) The provisions of the rules in this Subchapter, the state rules (1 NCAC 25), and the NCEPA must be read together as a whole in order to comply with the spirit and letter of the law.

(d) For the purpose of this Chapter:

(1) "Agency" means the Divisions and Offices of EHNR, as well as the boards, commissions, committees, and councils of EHNR having decision-making authority and adopting these rules by reference; except where the context clearly indicates otherwise.

(2) "Cumulative Effect" results from the incremental impact of the proposed activity when added to other past, present, and reasonably foreseeable future activities regardless of what entities undertake such other activities. Cumulative effects can result from individually minor but collectively significant activities taking place over a period of time.

(3) "Hazardous Waste" means everything included in its definition at 15A NCAC 13B .0101(11).

(4) "Secondary Indirect Effects" are caused by and result from the proposed activity although they are later in time or farther removed in distance, but they are still reasonably foreseeable.

(5) "Major Activity" means any activity with a potential for significantly affecting the quality of the environment, depending upon how the activity is carried out, including but not limited to construction, management, and maintenance programs and projects.

(6) "Non-Major Activity" includes those activities that are clearly not major and have only a minimum potential for significantly affecting the quality of the environment.

(7) "Non-State Entity" includes local governments, special purpose units of government, contractors, and individuals/corporations to which the NCEPA may apply.

(8) "Secretary" means the Secretary of EHNR.

*Statutory Authority G.S. 113A-2; 113A-6; 113A-9; 143B-10.*

**SECTION .0500 - MINIMUM CRITERIA**

**.0503 EXCEPTIONS TO MINIMUM CRITERIA**

Any activity falling within the parameters of the minimum criteria set out in Rule .0504 of this Section will not routinely be required to have environmental documentation under the NCEPA. However, the Secretary of EHNR may determine that environmental documents under the NCEPA are required in any case where one of the following findings applies to a proposed activity.

(1) The proposed activity may have a potential for significant adverse effects on wetlands, parklands,

prime or unique agricultural lands, or areas of recognized scenic, recreational, archaeological, or historical value including indirect effects; or would threaten a habitat identified on the Department of Interior's or the state's threatened and endangered species lists.

(2) The proposed activity could cause significant changes in industrial, commercial, residential, agricultural, or silvicultural land use concentrations or distributions which would be expected to create adverse water quality, air quality, or ground water impacts; or affect long-term recreational benefits, shellfish, wildlife, or their natural habitats.

(3) The proposed activity has secondary impacts indirect effect, or is part of cumulative effects, not generally covered in the approval process for the state action, and that may result in a potential risk to human health or the environment.

(4) The proposed activity is of such an unusual nature or has such widespread implications that an uncommon concern for its environmental effects has been expressed to the agency.

Statutory Authority G.S. 113A-4; 113A-6; 113A-9; 113A-10; 113A-11; 113A-12; 143B-10.

#### .0504 NON-MAJOR ACTIVITY

The following minimum criteria are established as an indicator of the types and classes of thresholds of activity at and below which environmental documentation under the NCEPA is not required. As set out in Rule .0503 of this Section, the Secretary may require environmental documentation for activities that would otherwise qualify under these minimum criteria thresholds.

(1) ~~Sampling, survey, monitoring and related research activities including but not limited to the following:~~

(a) ~~Aerial photography projects involving the photographing or mapping of the lands of the state.~~

(b) ~~Biological sampling and monitoring of fisheries resources through the use of traditional commercial fishing gear, electricity, and rotenone.~~

(c) ~~Soil survey projects involving the sampling or mapping of the soils of the state.~~

(d) ~~Establishing stream gaging stations for the purpose of measuring water flow at a particular site.~~

(e) ~~Placement of monitoring wells for the purpose of measuring groundwater levels, quantity, or quality.~~

(f) ~~Gathering surface or subsurface information on the geology, minerals, or energy resources, of the state.~~

(g) ~~Placement and use of geodetic survey control points.~~

(h) ~~Other routine survey and resource monitoring~~

(2) ~~Activities that are proposed for funding under the North Carolina Community Development Block Grant Program that are exempt or categorically excluded from NEPA under the provisions of the Environmental Review Procedures at 24 CFR Part 58.~~

(2) ~~Standard maintenance or repair activities as needed to maintain the originally defined function of a project or facility (but without expansion, increase in quantity, or decrease in quality) including but not limited to the following:~~

(a) ~~Routine repairs and housekeeping projects which maintain a facility's original condition and physical features, including re-roofing and minor alterations where in-kind materials and techniques are used. This also encompasses structures 50 years of age and older and for which no separate law, rule, or regulation dictates a formal review and approval process.~~

(b) ~~Roads, bridges, parking lots, and their related facilities.~~

(c) ~~Utilities (water, sewer, and electricity) on their existing rights of way.~~

(d) ~~Storm sewer and surface drainage systems.~~

(e) ~~Boat ramps, docks, piers, bulkheads, and associated facilities at water based recreation sites.~~

(f) ~~Diked, highground dredge material disposal areas.~~

(g) ~~Activities necessary to fulfill the existing requirements of in effect permits for the protection of the environment and human health.~~

(h) ~~Other maintenance and repair activities on previously approved projects, consistent with existing environmental documents.~~

(i) ~~Activities that are proposed for funding under the North Carolina Community Development Block Grant Program that are exempt or categorically excluded from NEPA review under the provisions of the Environmental Review Procedures at 24 CFR Part 58.~~

(j) ~~Activities that are proposed for funding under the North Carolina Emergency Shelter Grants Program that are exempt or categorically excluded from NEPA review under provisions of the Environmental Review Procedures at 24 CFR Part 50.~~

(3) ~~Minor construction activities including but not limited to the following:~~

(a) ~~New surface discharge facilities of less than 500,000 gallons per day or expansions of existing facilities with less than 500,000 gallons per day additional flow and where design flows are less than one third of the 7Q10 flow of the stream and do not result in a loss of any existing~~

use.

(b) Waste water spray irrigation and rotary distributor systems not greater than 100,000 gallons per day.

(c) New land application sites for sludge disposal with less than 200 total acres or expansions of existing permits of less than 200 additional acres and for which the sludge has been determined to be not a hazardous waste.

(d) Sewer extensions with less than three miles of new lines and a design volume not exceeding 1,000,000 gallons per day, or individual pump stations not exceeding 1,000,000 gallons per day.

(e) New and expanded subsurface waste water systems with a final design capacity not exceeding 100,000 gallons per day.

(f) Groundwater withdrawals of less than 1,000,000 gallons per day where such withdrawals are not expected to cause a significant alteration in established land use patterns, or degradation of groundwater or surface water quality.

(g) Air emissions of pollutants from a minor source or modification as defined in 15A NCAC 2D .0530, that are less than 100 tons per year or 250 tons per year as defined therein.

(h) Dams less than 25 feet in height and having less than 50 acre feet of storage capacity.

(i) Routine grounds maintenance and landscaping, such as sidewalks, trails, walls, gates, and related facilities, including outdoor exhibits. (j) Any new building construction involving all of the following:

(i) less than 10,000 square feet;

(ii) less than two hundred thousand dollars (\$200,000) cost;

(iii) less than one acre of previously undisturbed ground, unless the site is a National Register archaeological site; or

(iv) no handling or storage of hazardous materials in the completed facility.

(k) Demolition of or additions, rehabilitation and/or renovations to a structure not listed in the National Register of Historic Places or less than 50 years of age.

(l) Reclamation of underground storage tanks and restoration of groundwater quality.

(m) Systems that discharge swimming pool filter backwash.

(n) Installation of on farm Best Management Practices for the N.C. Cost Share Program For Nonpoint Source Pollution Control codified as 15A NCAC 6E.

(o) Activities that are proposed for funding under the North Carolina Community Development Block Grant Program that are exempt or categorically excluded from NEPA review under the provisions of the Environmental Review Procedures at 24 CFR Part 58.

(p) Activities that are proposed for funding under the North Carolina Emergency Shelter Grants Program that are exempt or categorically excluded from NEPA review under provisions of the Environmental Review Procedures at 24 CFR Part 50.

(4) Management activities including but not limited to the following:

(a) Replenishment of shellfish beds through the placement of shell or seed oysters on depleted and/or suitable marine habitat.

(b) Creation and enhancement of marine fisheries habitat through the establishment of artificial reefs on Environmental Protection Agency, U.S. Army Corps of Engineers, National Marine Fisheries Service, and U.S. Fish and Wildlife Service approved sites, including the use of artificial reef construction material requiring an EPA certificate of cleanliness from petroleum based products and other pollutants.

(c) Placement of fish attractors and shelter in public waters.

(d) Translocation and stocking of native fish and wildlife in accordance with wildlife management plans.

(e) Reintroduction of native endangered or threatened species in accordance with Federal guidelines or recovery plans.

(f) Production of native and agricultural plant species to create or enhance fish or wildlife habitat and forest resources, including fertilization, planting, mowing, and burning in accordance with management plans.

(g) Timber harvest in accordance with the National Forest Service or the N.C. Division of Forest Resources timber management plans.

(h) Reforestation of timberlands in accordance with the National Forest Service or the N.C. Division of Forest Resources timber management plans.

(i) Control of forest or agricultural insects and disease outbreaks, by the lawful application of labeled pesticides and herbicides by licensed applicators, on areas of no more than 100 acres.

(j) Control of aquatic weeds in stream channels, canals, and other water bodies, by the lawful application of labeled herbicides by licensed applicators, on areas of no more than two acres or 25 percent of the surface area, whichever is less.

(k) Removal of logs, stumps, trees, and other debris from stream channels where there is no channel excavation, and activities are carried out in accordance with Stream Obstruction Removal Guidelines prepared by the Stream Renovation Guidelines Committee of the Wildlife Society

and the American Fisheries Society.

(l) Dredging of existing navigation channels and basins, provided that the spoil is placed in existing and approved high ground disposal areas.

(m) Controlled or prescribed burning for wildlife and timber enhancement in accordance with applicable management plans.

(n) Drainage projects where the mean seasonal water table elevation will be lowered less than one foot over an area of one square mile or less.

(o) Manipulation of water levels in reservoirs or impoundments in accordance with approved management plans, for the purpose of providing for water supply storage, flood control, recreation, hydroelectric power, and fish and wildlife.

(p) Specific modifications in previously permitted discharges resulting in an increased flow of less than 500,000 gallons per day.

(q) Installation of on farm Best Management Practices for the N.C. Cost Share Program For Nonpoint Source Pollution Control codified as 15A NCAC 6E.

(r) Continuation of previously permitted activities where no increase in quantity or decrease in quality are proposed.

(s) Acquisition or acceptance of real property to be retained in a totally natural condition for its environmental benefits, or to be managed in accordance with plans for which environmental documents have been approved.

(t) Care of all trees, plants, and groundcovers on public lands.

(u) Care, including medical treatment, of all animals maintained for public display.

(v) Activities that are proposed for funding under the North Carolina Community Development Block Grant Program that are exempt or categorically excluded from NEPA review under the provisions of the Environmental Review Procedures at 24 CFR Part 58.

(w) Activities that are proposed for funding under the North Carolina Emergency Shelter Grants Program that are exempt or categorically excluded from NEPA review under provisions of the Environmental Review Procedures at 24 CFR Part 50.

(x) Private use of public lands including but not limited to the following:

(a) Use of pound nets.

(b) Mechanical shellfish harvesting.

(c) Shellfish relaying and transplanting.

(d) Harvest of shellfish during closed seasons.

(e) Special fisheries management activities under 15A NCAC 31.0012.

(f) Scientific collecting within coastal waters.

(g) Aquaculture operations within estuarine waters.

(h) Introduction and transfer of marine and estuarine organisms.

(1) Sampling, survey, monitoring and related research activities including but not limited to the following:

(a) Aerial photography projects involving the photographing or mapping of the lands of the state.

(b) Biology sampling and monitoring of:

(i) Fisheries resources through the use of traditional commercial fishing gear, electricity, and rotenone; and

(ii) Wildlife resources through the use of traditional techniques, including but not limited to traps, drugs, and firearms.

(c) Soil survey projects involving the sampling or mapping of the soils of the state.

(d) Establishing stream gaging stations for the purpose of measuring water flow at a particular site.

(e) Placement of monitoring wells for the purpose of measuring groundwater levels, quantity, or quality.

(f) Gathering surface or subsurface information on the geology, minerals, or energy resources, of the state.

(g) Placement and use of geodetic survey control points.

(h) Other routine survey and resource monitoring activities, or other temporary activities required for research into the environment which have minimum long-term effects.

(2) Standard maintenance or repair activities as needed to maintain the originally defined function of a project or facility (but without expansion, increase in quantity, decrease in quality/use, or release of hazardous waste including but not limited to the following:

(a) Routine repairs and housekeeping projects which maintain a facility's original condition and physical features, including re-roofing and minor alterations where in-kind materials and techniques are used. This also encompasses structures 50 years of age and older and for which no separate law, rule, or regulation dictates a formal review and approval process.

(b) Roads, bridges, parking lots, and their related facilities.

(c) Utilities on their existing rights-of-way.

(d) Surface drainage systems, including modifications which reduce the discharge of freshwater or otherwise mitigate existing negative environmental effects.

(e) Boat ramps, docks, piers, bulkheads, and associated facilities.

(f) Diked, highground dredge-material disposal areas.

(g) Activities necessary to fulfill the existing re-

(h) Requirements of in-effect permits for the protection of the environment and human health.

(i) Other maintenance and repair activities on projects which are consistent with previously approved environmental documents.

(j) Routine grounds maintenance and landscaping, such as sidewalks, trails, walls, gates, and related facilities, including outdoor exhibits.

(3) Minor construction activities, (except that conditions may cause exceptions to these thresholds per Rule .0503 of this Section) including but not limited to the following:

(a) Wastewater treatment systems such as the following:

- (i) Relocation of discharge points within the same river basin;
- (ii) New surface discharge facilities of less than 500,000 gallons per day or expansion of existing discharge facilities with less than 500,000 gallons per day additional flow;
- (iii) New discharge facilities where design flows are less than one-third of the 7-day, 10-year low flow of the receiving stream;
- (iv) New wastewater spray irrigation, rotary distribution, or subsurface waste water systems with a final capacity not exceeding 100,000 gallons per day;
- (v) New individual land application sites for residuals utilization with less than 200 total acres of application area per site or expansions under existing permits of less than 200 additional acres of application area per site, where less than 10 percent of the total land application area is converted from a non-plantation forested area;
- (vi) Sewer extensions with either, less than three miles of new lines or a design flow not exceeding 1,000,000 gallons per day; and
- (vii) New individual pump stations with a design flow not exceeding 1,000,000 gallons per day or expansions of existing pump stations with less than 1,000,000 gallons per day additional flow.

(b) Potable water systems such as the following:

- (i) Construction of new wells for water supply purposes;
- (ii) Improvements to water treatment plants that involve less than 1,000,000 gallons per day added capacity or design withdrawal less than one-fifth of the 7-day, 10-year low flow of the contributing stream;
- (iii) Improvements not intended to add capacity to the facility;
- (iv) Installation of water lines in proposed or existing rights-of-way for streets or utilities, or new water lines less than five miles in length; and

(v) Construction of water tanks, or booster pumping or re-chlorination pump stations.

(c) Groundwater withdrawals of less than 1,000,000 gallons per day where such withdrawals are not expected to cause a significant alteration in established land use patterns, or degradation of groundwater or surface water quality.

(d) Solid waste disposal activities such as the following:

- (i) Construction of solid waste management facilities, other than landfills exempt pursuant to NCGS 130A-294(a)(4), which store, treat, process incinerate, or dispose of less than 350 tons per day (averaged over one year) of solid waste;
- (ii) Disposal of solid waste by land application on 100 total acres or less, where less than 10 percent of the total land application area is converted from a non-plantation forested area; and
- (iii) Land disturbing activities which are not located within High Quality Waters (HQW) Zones or Trout Water Buffer Zones, and land-disturbing activities that will disturb less than five acres within a HQW Zone or a Trout Water Buffer Zone.

(e) Development activities within Areas of Environmental Concern (AECs) of the 20 county coastal area which do not require a Coastal Area Management Act (CAMA) Major or Minor Permit pursuant to 15A NCAC 7K-Activities in Areas of Environmental Concern which Do Not Require a Coastal Area Management Act Permit except activities which might require a NCEPA Environmental Document under provisions of another state approval or authorization.

(f) Development activities within AECs of the 20 county coastal area which require a CAMA Major or Minor Permit and which meet all applicable criteria set forth in 15A NCAC 7H-State Guidelines for Areas of Environmental Concern, except the following:

- (i) New marinas;
- (ii) New navigation channels;
- (iii) Excavation of materials from aquatic environments for use for beach nourishment or other purposes not directly related to approved navigation projects; and
- (iv) Any activity which might require a NCEPA environmental document under provisions of another state approval or state or local governmental agency requirement.

(g) Air emissions of pollutants from a minor source or modification as defined in 15A NCAC 2D.0503, that are less than 100 tons per year or 250 tons per year as defined therein.

(h) Reclamation of underground storage tanks and

(i) restoration of groundwater quality.

(j) Dams less than 25 feet in height and having less than 50 acre-feet of storage capacity.

(k) Land disturbing activities which are not located within High Quality Water (HOW) Zones or Trout Water Buffer Zones, and land-disturbing activities that will disturb less than five acres within a HOW Zone or a Trout Water Buffer Zone.

(l) Any new construction for a building which involves all of the following:

- A footprint of less than 10,000 square feet;
- A location that is not a National Register Archaeological site; and
- The building's purpose is not for storage of hazardous waste.

(m) Demolition of or additions, rehabilitation or renovations to a structure not listed in the National Register of Historic places or less than 50 years of age.

(n) Routine grounds construction and landscaping, such as sidewalks, trails, walls, gates and related facilities, including outdoor exhibits.

(o) Installation of on-farm Best Management Practices for the NC Cost Share Program for Nonpoint Source Pollution Control codified as 15A NCAC 6E.

(p) Construction or remodeling of swimming pools.

(4) Management activities including but not limited to the following:

- Replenishment of shellfish beds through the placement of seed oysters or shellfish clutch on suitable marine habitats.
- Creation and enhancement of marine fisheries habitat through the establishment of artificial reefs in accordance with the Division of Marine Fisheries' Artificial Reef Master Plan.
- Placement of fish attractors and shelter in public waters managed by the N.C. Wildlife Resources Commission.
- Translocation and stocking of native or naturalized fish and wildlife in accordance with appropriate agency species management plans, watershed management plans, or other approved resource management plans.
- Reintroduction of native endangered or threatened species in accordance with State or Federal guidelines or recovery plans.
- Production of native and agricultural plant species to create or enhance fish or wildlife habitat and forest resources, including fertilization, planting, mowing, and burning in accordance with fisheries, wildlife, or forestry management plans.
- Forest products harvest in accordance with the National Forest Service or the N.C. Division of Forest Resources forest products management plans.

(h) Reforestation of woodlands in accordance with the National Forest Service or the N.C. Division of Forest Resources woodlands management plans.

(i) Use of forestry best management practices to meet the performance standards in Forest Practice Guidelines Related to Water Quality codified as 15A NCAC 11.

(j) Control of forest or agricultural insects and disease outbreaks, by lawful application of labeled pesticides and herbicides by licensed applicators, on areas of no more than 100 acres. Control of species composition on managed forest lands as prescribed by approved forest management plans by the lawful application of herbicides by licensed applicators.

(k) Control of aquatic weeds in stream channels, canals and other water bodies, by the lawful application of labeled herbicides by licensed applicators, on areas of no more than two acres or 25 percent of surface area, whichever is less. Removal of logs, stumps, trees, and other debris from stream channels where there is no channel excavation, and activities are carried out in accordance with "Best Management Practices (BMPs) for Selective Clearing and Snagging," Appendix B in Incremental Effects of Large Woody Debris Removal on Physical Aquatic Habitat, US Army Corps of Engineers Technical Report EL-92-35, Smith et al, 1992, or other guidelines approved through the Intergovernmental Review process as set out at 1 NCAC 25 .0211.

(l) Dredging of existing navigation channels and basins to originally approved specifications, provided that the spoil is placed in existing and approved high ground disposal areas.

(m) Controlled or prescribed burning for wildlife, timber enhancement, and hazard reduction in accordance with applicable management plans.

(n) Plowing fire lines with tractor plow units, or other mechanized equipment, for the purpose of suppressing wildland (brush, grass, or woodland) fires and prescribed burning.

(o) Scooping or dipping water from streams, lakes, or sounds with aircraft or helicopters for the purpose of suppressing wildland (brush, grass, or woodland) fires.

(p) Drainage projects where the mean seasonal water table elevation will be lowered less than one foot over an area of one square mile or less, and riparian and wetland areas will not be permanently effected.

(q) Manipulation of water levels in reservoirs or impoundments in accordance with approved management plans, for the purpose of providing

for water supply storage, flood control, recreation, hydroelectric power, fish and wildlife, and aquatic weed control.

(t) Specific modifications in previously permitted discharges resulting in an increased flow of less than 500,000 gallons per day.

(u) Installation of on-farm Best Management Practices for the N.C. Cost Share Program For Nonpoint Source Pollution Control codified as 15A NCAC 6E.

(v) Continuation of previously permitted activities where no increase in quantity or decrease in quality are proposed.

(w) Acquisition or acceptance of real property to be retained in a totally natural condition for its environmental benefits, or to be managed in accordance with plans for which environmental documents have been approved.

(x) Care of all trees, plants, and groundcovers on public lands.

(y) Care, including medical treatment, of all animals maintained for public display.

(z) Activities authorized for control of mosquitoes such as the following:

(i) Mosquito control water management work in freshwater streams performed in accordance with "Best Management Practices (BMPs) for Selective Clearing and Snagging" Appendix B in Incremental Effects of Large Woody Debris Removal on Physical Aquatic Habitat, US Army Corps of Engineers Technical Report EL-92-35, Smith et al, 1992, or other guidelines reviewed through the Intergovernmental Review process as set out at 1 NCAC 25 .0211;

(ii) Mosquito control water management work in salt marsh environments performed under Open Marsh Water Management guidelines reviewed through the Intergovernmental Review process as set out at 1 NCAC 25 .0211;

(iii) Lawful application of chemicals approved for mosquito control by the United States Environmental Protection Agency and the State when performed under the supervision of licensed operators; and

(iv) Lawful use of established species to control mosquitoes.

(5) Private use of public lands including but not limited to the following activities, when conducted in accordance with permit requirements:

(a) Use of pound nets.

(b) Mechanical shellfish harvesting.

(c) Shellfish relaying and transplanting.

(d) Harvest of shellfish during closed season.

(e) Special fisheries management activities under 15A NCAC 31 .0012.

(f) Aquaculture operations within coastal waters.

(g) Scientific collecting within coastal waters.

(h) Introduction and transfer of marine and estuarine organisms.

(i) Development activities within Areas of Environmental Concern (AECs) of the 20 county coastal area which do not require a Coastal Area Management Act (CAMA) Major or Minor Permit pursuant to 15A NCAC 7K-Activities in Areas of Environmental Concern Which Do Not Require a Coastal Area Management Act Permit except activities which might require a NCEPA Environmental Document under provisions of another state approval or authorization.

(j) Development activities within AECs of the 20 county coastal area which require a CAMA Major or Minor Permit and which meet all applicable criteria set forth in 15A NCAC 7H- State Guidelines for Areas of Environmental Concern, except the following:

(i) New marinas;

(ii) New navigation channels;

(iii) Excavation of material from aquatic environments for use for beach nourishment or other purposes not directly related to approved navigation projects; and

(iv) Any activity which might require a NCEPA environmental document under provisions of another state approval or state or local governmental agency requirement.

(k) Construction of piers and boat docks on all State Lakes when conducted in accordance with 15A NCAC 12C .0300.

Statutory Authority G.S. 113A-4; 113A-6; 113A-9; 113A-10; 113A-11; 113A-12; 143B-10.

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**N**otice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Environmental Management Commission intends to amend rule cited as 15A NCAC 2B .0315.

**Proposed Effective Date:** *May 1, 1996.*

**ANNOUNCEMENT OF RULE-MAKING TO RECLASSIFY THE AUSTIN CREEK  
WATERSHED IN FRANKLIN AND WAKE COUNTIES**

The NC Department of Environment, Health and Natural Resources on behalf of the Environmental Management Commission (EMC) will conduct a public hearing in order to receive public comments on a proposal to reclassify the Austin Creek watershed (Neuse River Basin) in Franklin and Wake Counties. The watershed is proposed to be reclassified from WS-III NSW (Nutrient Sensitive Waters) and WS-III CA (Critical Area) NSW to Class C NSW.

**PROPOSAL:**

**Affected Area:** *Austin Creek watershed which includes Austin Creek, from its source to Smith Creek, and tributaries (Neuse River Basin).*

**Current Class:** *WS-III NSW (Nutrient Sensitive Waters) and WS-III CA (Critical Area) NSW.*

**Proposed Class:** *C NSW.*

**Affected Local Governments:** *Franklin and Wake Counties and the Town of Wake Forest.*

**Summary:** *The Austin Creek watershed is approximately 2,615 acres in size and is located in Franklin and Wake Counties (Neuse River Basin). The watershed is currently classified as WS-III which designates the watershed as a drinking water supply source. The Town of Wake Forest has requested that the Austin Creek watershed be reclassified from its current WS-III classification. The Town notes that the watershed has not been used as a water supply source and that current studies indicate that it is not of sufficient size to be a feasible drinking water supply source. Three local governments have land use authority within the watershed. They are the Town of Wake Forest, and Franklin and Wake Counties. The Town currently uses Smith Creek Reservoir and water from the City of Raleigh, as needed. The water supply plan for the Town of Wake Forest also notes that potential future sources would be one of the following: increase flows from the City of Raleigh, the Neuse River, and expansion of the Wake Forest Reservoir or water from the Franklin Water and Sewer Authority.*

*The proposed reclassification to Class C would remove the current drinking water supply WS-III classification and the requirements for the Town of Wake Forest and Franklin and Wake Counties to continue implementing drinking water supply ordinances for the Austin Creek watershed. In addition, the Division of Environmental Management would no longer prohibit new domestic wastewater dischargers within the area previously defined as the Critical Area and new industrial discharges in the Balance of the Watershed.*

**Public Input:** *The purpose of this announcement is to encourage those interested in this proposal to provide comments. You may either attend the public hearing and make relevant verbal comments or submit written comments, data or other relevant information by March 1, 1996. The Hearing Officer may limit the length of time that you may speak at the public hearing, if necessary, so that all those who wish to speak may have an opportunity to do so. We encourage you to submit written comments as well.*

**Public Hearing:** *Location: Wake Forest Town Hall (Board Room)  
401 Elm Avenue  
Wake Forest, NC*

## PROPOSED RULES

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Date: January 30, 1996

Time: 7:00 pm

**Comment  
Procedures:**

*It is very important that all interested and potentially affected persons or parties make their views known to the EMC whether in favor of or opposed to any and all provisions of the proposed water supply reclassification being notice. THE EMC MAY, IN ACCORDANCE WITH N.C.G.S. 150B-21.2, MAKE CHANGES IN FINAL RULES WITHOUT RENOTICE AS LONG AS THE ADOPTED RULES DO NOT DIFFER SUBSTANTIALLY FROM THE PROPOSED RULES. IN ACCORDANCE WITH THIS AUTHORITY, THE EMC MAY ADOPT FINAL MANAGEMENT REQUIREMENTS OR RULES THAT ARE MORE OR LESS STRINGENT THAN THOSE BEING NOTICED IF THE EMC DETERMINES THAT THE FINAL ADOPTED RULES DO NOT DIFFER SUBSTANTIALLY FROM THE PROPOSED RULES. ALL INTERESTED AND POTENTIALLY AFFECTED PERSONS ARE STRONGLY ENCOURAGED TO READ THE ENTIRE ANNOUNCEMENT AND SUPPORTING INFORMATION, AND COMMENT ON THE PROPOSAL PRESENTED. The proposed effective date for final rules pursuant to this rule-making process is May 1, 1996. Written comments may be submitted to the person listed below.*

**Authority:**

*G.S. 143-214.1 Amendments to the Schedule of Classifications for the Neuse River Basin as referenced in 15A NCAC 2B .0315.*

**Additional  
Information:**

*Further explanations and details of the proposed reclassification may be obtained by writing or calling:*

Steve Zoufaly  
DEHNR/Division of Environmental Management  
PO Box 29535  
Raleigh, NC 27626-0535  
(919) 733-5083, ext. 566

**Fiscal Note:**

*This Rule does not affect the expenditures or revenues of state or local government funds.*

### CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

#### SUBCHAPTER 2B - SURFACE WATER STANDARDS: MONITORING

##### SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS

###### .0315 NEUSE RIVER BASIN

(a) Places where the schedule may be inspected:

- (1) Clerk of Court:
  - Beaufort County
  - Carteret County
  - Craven County
  - Durham County
  - Franklin County
  - Granville County
  - Greene County
  - Johnston County
  - Jones County
  - Lenoir County
  - Nash County
  - Orange County

Pamlico County

Person County

Pitt County

Wake County

Wayne County

Wilson County

(2) North Carolina Department of Environment, Health, and Natural Resources:

(A) Raleigh Regional Office

3800 Barrett Drive

Raleigh, North Carolina

(B) Washington Regional Office

1424 Carolina Avenue

Washington, North Carolina

(C) Wilmington Regional Office

127 Cardinal Drive

Wilmington, North Carolina

(b) The Neuse River Basin Schedule of Classification and Water Quality Standards was amended effective:

- (1) March 1, 1977;
- (2) December 13, 1979;
- (3) September 14, 1980;
- (4) August 9, 1981;
- (5) January 1, 1982;

- (6) April 1, 1982;
- (7) December 1, 1983;
- (8) January 1, 1985;
- (9) August 1, 1985;
- (10) February 1, 1986;
- (11) May 1, 1988;
- (12) July 1, 1988;
- (13) October 1, 1988;
- (14) January 1, 1990;
- (15) August 1, 1990;
- (16) December 1, 1990;
- (17) July 1, 1991;
- (18) August 3, 1992;
- (19) April 1, 1994. 1994;
- (20) May 1, 1996.

(c) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective July 1, 1988 as follows:

- (1) Smith Creek [Index No. 27-23-(1)] from source to the dam at Wake Forest Reservoir has been reclassified from Class WS-III to WS-I.
- (2) Little River [Index No. 27-57-(1)] from source to the N.C. Hwy. 97 Bridge near Zebulon including all tributaries has been reclassified from Class WS-III to WS-I.
- (3) An unnamed tributary to Buffalo Creek just upstream of Robertson's Pond in Wake County from source to Buffalo Creek including Leo's Pond has been reclassified from Class C to B.

(d) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective October 1, 1988 as follows:

- (1) Walnut Creek (Lake Johnson, Lake Raleigh) [Index No. 27-34-(1)]. Lake Johnson and Lake Raleigh have been reclassified from Class WS-III to Class WS-III & B.
- (2) Haw Creek (Camp Charles Lake) (Index No. 27-86-3-7) from the backwaters of Camp Charles Lake to dam at Camp Charles Lake has been reclassified from Class C to Class B.

(e) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin has been amended effective January 1, 1990 as follows:

- (1) Neuse-Southeast Pamlico Sound ORW Area which includes all waters within a line beginning at the southwest tip of Ocracoke Island, and extending north west along the Tar-Pamlico River Basin and Neuse River Basin boundary line to Lat. 35 degrees 06' 30", thence in a southwest direction to Ship Point and all tributaries, were reclassified from Class SA NSW to Class SA NSW ORW.
- (2) Core Sound (Index No. 27-149) from northeastern limit of White Oak River Basin (a line from Hall Point to Drum Inlet) to Pamlico Sound and all tributaries, except Thorofare, John Day Ditch were reclassified from Class SA NSW to Class

SA NSW ORW.

(f) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective December 1, 1990 with the reclassification of the following waters as described in (1) through (3) of this Paragraph.

- (1) Northwest Creek from its source to the Neuse River (Index No. 27-105) from Class SC Sw NSW to Class SB Sw NSW;
- (2) Upper Broad Creek [Index No. 27-106-(7)] from Pamlico County SR 1103 at Lees Landing to the Neuse River from Class SC Sw NSW to Class SB Sw NSW; and
- (3) Goose Creek [Index No. 27-107-(11)] from Wood Landing to the Neuse River from Class SC Sw NSW to Class SB Sw NSW.

(g) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective July 1, 1991 with the reclassification of the Bay River [Index No. 27-150-(1)] within a line running from Flea Point to the Hammock, east to a line running from Bell Point to Darby Point, including Harper Creek, Tempe Gut, Moore Creek and Newton Creek, and excluding that portion of the Bay River landward of a line running from Poorhouse Point to Darby Point from Classes SC Sw NSW and SC Sw NSW HQW to Class SA NSW.

(h) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 2B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(i) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective April 1, 1994 as follows:

- (1) Lake Crabtree [Index No. 27-33-(1)] was reclassified from Class C NSW to Class B NSW.
- (2) The Eno River from Orange County State Road 1561 to Durham County State Road 1003 [Index No. 27-10-(16)] was reclassified from Class WS-IV NSW to Class WS-IV&B NSW.
- (3) Silver Lake (Index No. 27-43-5) was reclassified from Class WS-III NSW to Class WS-III&B NSW.

(j) The Schedule of Classifications and Water Quality Standards for the Neuse River Basin was amended effective April 1, 1996 with the reclassification of Austin Creek [Index Nos. 27-23-3-(1) and 27-23-3-(2)] from its source to Smith Creek from classes WS-III and WS-III NSW CA to

class C NSW.

Statutory Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).

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**N**otice is hereby given in accordance with G.S. 150B-21.2 that the DEHNR - Environmental Management Commission intends to amend rules cited as 15A NCAC 2B .0216, .0224 and .0225.

**Proposed Effective Date:** February 1, 1996.

**Instructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice):**

**15A NCAC 2B .0216** - Any person requesting that the Environmental Management Commission conduct a public hearing on this proposed amendment must submit a written request to Lisa Martin, Division of Environmental Management, Water Quality Section, PO Box 29535, Raleigh, NC 27626-0535 by December 1, 1995. Mailed written requests must be postmarked no later than December 1, 1995.

**15A NCAC 2B .0224, .0225** - Any person may request the Environmental Management Commission conduct a public hearing on the proposed amendments by submitting a written request for a public hearing, postmarked no later than November 30, 1995, to Beth McGee, Division of Environmental Management, Water Quality Section, PO Box 29535, Raleigh, NC 27626-0535. The request must specify which rule the hearing is being requested on.

**Reason for Proposed Action:**

**15A NCAC 2B .0216** - Inadvertent deletion of text during rule recodification process.

**15A NCAC 2B .0224, .0225** - To delete duplicative and conflicting portions of the water quality standards rules that deal with stormwater management requirements of ORW and HQW areas. These requirements were moved to 15A NCAC 2H .1000 and became effective September 1, 1995 as part of a rule-making process to consolidate stormwater requirements. No additional changes other than deleting duplicative portions are part of this requested action and no new rules, standards or requirements of any type would result.

**Comment Procedures:**

**15A NCAC 2B .0216** - Any persons interested in this proposed amendment is encouraged to submit written comments. Comments must be postmarked by December 15, 1995 and submitted to Lisa Martin, Division of Environmental Management, Water Quality Section, PO Box 29535, Raleigh, NC 27626-0535.

**15A NCAC 2B .0224, .0225** - All persons interested in these proposed amendments are encouraged to submit written comments. Comments must be postmarked by December 15, 1995, and submitted to Beth McGee, Division of Environmental Management, Water Quality Section, PO Box 29535,

Raleigh, NC 27626-0535.

**Fiscal Note:** These Rules do not affect the expenditures or revenues of state or local government funds.

## SUBCHAPTER 2B - SURFACE WATER STANDARDS: MONITORING

### SECTION .0200 - CLASSIFICATIONS AND WATER QUALITY STANDARDS APPLICABLE TO SURFACE WATERS OF NORTH CAROLINA

#### .0216 FRESH SURFACE WATER QUALITY STANDARDS FOR WS-IV WATERS

The following water quality standards apply to surface water supply waters that are classified WS-IV. Water quality standards applicable to Class C waters as described in Rule .0211 of this Section also apply to Class WS-IV waters.

- (1) **Best Usage of Waters.** Source of water supply for drinking, culinary, or food-processing purposes for those users where a more protective WS-I, WS-II or WS-III classification is not feasible and any other best usage specified for Class C waters.
- (2) **Conditions Related to Best Usage.** Waters of this class are protected as water supplies which are generally in moderately to highly developed watersheds or protected areas and meet average watershed development density levels as specified in Sub-Items (3)(b)(i)(A), (3)(b)(i)(B), (3)(b)(ii)(A) and (3)(b)(ii)(B) of this Rule; discharges which qualify for a General Permit pursuant to 15A NCAC 2H .0127, trout farm discharges, recycle (closed loop) systems that only discharge in response to 10-year storm events, other stormwater discharges and domestic wastewater discharges are allowed in the protected and critical areas; treated industrial wastewater discharges are allowed in the protected and critical areas; however, new industrial wastewater discharges in the critical area are required to meet the provisions of 15A NCAC 2B .0201(d)(1)(B)(iv), (v) and (vii), and 15A NCAC 2B .0203; new industrial connections and expansions to existing municipal discharges with a pretreatment program pursuant to 15A NCAC 2H .0904 are allowed; the waters, following treatment required by the Division of Environmental Health, shall meet the Maximum Contaminant Level concentrations considered safe for drinking, culinary, or food-processing purposes which are specified in the national drinking water regulations and in the North Carolina Rules Governing Public Water Supplies, 15A NCAC 18C .1500; sources of water pollution which preclude any of these uses on either a short-term or long-term basis will be considered to be violat-

ing a water quality standard. standard; the Class WS-II or WS-III classifications may be used to protect portions of Class WS-IV water supplies. For reclassifications of these portions of WS-IV water supplies occurring after the July 1, 1992 statewide reclassification, the more protective classification requested by local governments shall be considered by the Commission when all local governments having jurisdiction in the affected area(s) have adopted a resolution and the appropriate ordinances to protect the watershed or the Commission acts to protect a watershed when one or more local governments has failed to adopt necessary protection measures.

(3) Quality Standards Applicable to Class WS-IV Waters:

(a) Sewage, industrial wastes, non-process industrial wastes, or other wastes: none except for those specified in Item (2) of this Rule and Rule .0104 of this Subchapter; and none which shall have an adverse effect on human health or which are not effectively treated to the satisfaction of the Commission and in accordance with the requirements of the Division of Environmental Health, North Carolina Department of Environment, Health, and Natural Resources; any discharges or industrial users subject to pretreatment standards may be required by the Commission to disclose all chemical constituents present or potentially present in their wastes and chemicals which could be spilled or be present in runoff from their facility which may have an adverse impact on downstream water supplies; these facilities may be required to have spill and treatment failure control plans as well as perform special monitoring for toxic substances;

(b) Nonpoint Source and Stormwater Pollution: none that would adversely impact the waters for use as water supply or any other designated use;

(i) Nonpoint Source and Stormwater Pollution Control Criteria For Entire Watershed or Protected Area:

(A) Low Density Option: Development activities which require a Sedimentation/Erosion Control Plan in accordance with 15A NCAC 4 established by the North Carolina Sedimentation Control Commission or approved local government programs as delegated by the Sedimentation Control Commission must be limited to no more than either: two dwelling units of single family detached development per acre (or 20,000 square foot lot excluding roadway right-of-way) or 24 percent built-upon area for all other residential and non-residential development; or three dwelling units per acre or 36 percent

built-upon area for projects without curb and gutter street systems in the protected area outside of the critical area; Stormwater runoff from the development shall be transported by vegetated conveyances to the maximum extent practicable;

(B) High Density Option: If new development activities which require a Sedimentation/Erosion Control Plan exceed the low density requirements of Sub-Item (3)(b)(i)(A) of this Rule then development must control the runoff from the first inch of rainfall; new residential and non-residential development shall not exceed 70 percent built-upon area;

(C) Land within the critical and protected area shall be deemed compliant with the density requirements if the following condition is met: The density of all existing development at the time of reclassification does not exceed the density requirement when densities are averaged throughout the entire area;

(D) Cluster development is allowed on a project-by-project basis as follows:

(I) overall density of the project meets associated density or stormwater control requirements of this Section;

(II) buffers meet the minimum statewide water supply watershed protection requirements;

(III) built-upon areas are designed and located to minimize stormwater runoff impact to the receiving waters, minimize concentrated stormwater flow, maximize the use of sheet flow through vegetated areas; and maximize the flow length through vegetated areas;

(IV) areas of concentrated development are located in upland areas and away, to the maximum extent practicable, from surface waters and drainageways;

(V) remainder of tract to remain in vegetated or natural state;

(VI) area in the vegetated or natural state may be conveyed to a property owners association; a local government for preservation as a park or greenway; a conservation organization; or placed in a permanent conservation or farmland preservation easement;

(VII) a maintenance agreement for the vegetated or natural area shall be filed with the Register of Deeds; and

(VIII) cluster development that meets the applicable low density option requirements shall transport stormwater runoff

from the development by vegetated conveyances to the maximum extent practicable;

(E) If local governments choose the high density development option which requires engineered stormwater controls, then they shall assume ultimate responsibility for operation and maintenance of the required controls as outlined in Rule .0104 of this Subchapter;

(F) Minimum 100 foot vegetative buffer is required for all new development activities that exceed the low density option requirements as specified in Sub-Item (3)(b)(i)(A) or Sub-Item (3)(b)(ii)(A) of this Rule, otherwise a minimum 30 foot vegetative buffer for development is required along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies; nothing in this Section shall stand as a bar to desirable artificial streambank shoreline stabilization;

(G) No new development is allowed in the buffer; water dependent structures, or other structures, such as flag poles, signs and security lights, which result in only diminimus increases in impervious area and public projects such as road crossings and greenways may be allowed where no practicable alternative exists; these activities shall minimize built-upon surface area, divert runoff away from surface waters and maximize the utilization of BMPs;

(H) For local governments that do not use the high density option, a maximum of 10 percent of each jurisdiction's portion of the watershed outside of the critical area as delineated on July 1, 1995 may be developed with new development projects and expansions of existing development of up to 70 percent built-upon surface area in addition to the new development approved in compliance with the appropriate requirements of Sub-Item (3)(b)(i)(A) of this Rule. For expansions to existing development, the existing built-upon surface area is not counted toward the allowed 70 percent built-upon surface area. A local government having jurisdiction within the watershed may transfer, in whole or in part, its right to the 10 percent/70 percent land area to another local government within the watershed upon submittal of a joint resolution for review by the Commission. When the designated water supply watershed area is composed of public land, such as National Forest land, local governments may count the public land acreage within the designated watershed area outside of the critical area in figuring the acreage allowed under this provision. Each project must, to the maximum extent practicable, minimize built-upon surface area, direct stormwater runoff away from surface waters and incorporate best management practices to minimize water quality impacts;

(ii) Critical Area Nonpoint Source and Stormwater Pollution Control Criteria:

(A) Low Density Option: New development activities which require a Sedimentation/Erosion Control Plan in accordance with 15A NCAC 4 established by the North Carolina Sedimentation Control Commission or approved local government programs as delegated by the Sedimentation Control Commission must be limited to no more than two dwelling units of single family detached development per acre (or 20,000 square foot lot excluding roadway right-of-way) or 24 percent built-upon area for all other residential and non-residential development; Stormwater runoff from the development shall be transported by vegetated conveyances to the maximum extent practicable;

(B) High Density Option: If new development density exceeds the low density requirements specified in Sub-Item (3)(b)(ii)(A) of this Rule engineered stormwater controls must be used to control runoff from the first inch of rainfall; new residential and non-residential development shall not exceed 50 percent built-upon area;

(C) No new permitted sites for land application of residuals or petroleum contaminated soils are allowed;

(D) No new landfills are allowed;

(c) Odor producing substances contained in sewage, industrial wastes, or other wastes: only such amounts, whether alone or in combination with other substances or waste, as will not cause taste and odor difficulties in water supplies which can not be corrected by treatment, impair the palatability of fish, or have a deleterious effect upon any best usage established for waters of this class;

(d) Phenolic compounds: not greater than 1.0 ug/l (phenols) to protect water supplies from taste and odor problems due to chlorinated phenols; specific phenolic compounds may be given a different limit if it is demonstrated not to cause

taste and odor problems and not to be detrimental to other best usage;

(e) Total hardness: not greater than 100 mg/l as calcium carbonate;

(f) Total dissolved solids: not greater than 500 mg/l;

(g) Toxic and other deleterious substances:

(i) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for non-carcinogens in Class WS-IV waters:

(A) Barium: 1.0 mg/l;

(B) Chloride: 250 mg/l;

(C) Manganese: 200 ug/l;

(D) Nickel: 25 ug/l;

(E) Nitrate nitrogen: 10.0 mg/l;

(F) 2,4-D: 100 ug/l;

(G) 2,4,5-TP (Silvex): 10 ug/l;

(H) Sulfates: 250 mg/l;

(ii) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for carcinogens in Class WS-IV waters:

(A) Beryllium: 6.8 ng/l;

(B) Benzene: 1.19 ug/l;

(C) Carbon tetrachloride: 0.254 ug/l;

(D) Chlorinated benzenes: 488 ug/l;

(E) Dioxin: 0.000013 ng/l;

(F) Hexachlorobutadiene: 0.445 ug/l;

(G) Polynuclear aromatic hydrocarbons: 2.8 ng/l;

(H) Tetrachloroethane (1,1,2,2): 0.172 ug/l;

(I) Tetrachloroethylene: 0.8 ug/l;

(J) Trichloroethylene: 3.08 ug/l;

(K) Vinyl Chloride: 2 ug/l;

(L) Aldrin: 0.127 ng/l;

(M) Chlordane: 0.575 ng/l;

(N) DDT: 0.588 ng/l;

(O) Dieldrin: 0.135 ng/l;

(P) Heptachlor: 0.208 ng/l.

(b) dual or recirculating sand filters, disinfection and step aeration.

(i) All new NPDES wastewater discharges (except single family residences) shall be required to provide the treatment described below:

(i) Oxygen Consuming Wastes: Effluent limitations shall be as follows:  $BOD_5 = 5 \text{ mg/l}$ ,  $NH_3-N = 2 \text{ mg/l}$  and  $DO = 6 \text{ mg/l}$ . More stringent limitations shall be set, if necessary, to ensure that the cumulative pollutant discharge of oxygen-consuming wastes shall not cause the DO of the receiving water to drop more than 0.5 mg/l below background levels, and in no case below the standard. Where background information is not readily available, evaluations shall assume a percent saturation determined by staff to be generally applicable to that hydroenvironment.

(ii) Total Suspended Solids: Discharges of total suspended solids (TSS) shall be limited to effluent concentrations of 10 mg/l for trout waters and PNA's, and to 20 mg/l for all other High Quality Waters.

(iii) Disinfection: Alternative methods to chlorination shall be required for discharges to trout streams, except that single family residences may use chlorination if other options are not economically feasible. Domestic discharges are prohibited to SA waters.

(iv) Emergency Requirements: Failsafe treatment designs shall be employed, including stand-by power capability for entire treatment works, dual train design for all treatment components, or equivalent failsafe treatment designs.

(v) Volume: The total volume of treated wastewater for all discharges combined shall not exceed 50 percent of the total instream flow under 7Q10 conditions.

(vi) Nutrients: Where nutrient overenrichment is projected to be a concern, appropriate effluent limitations shall be set for phosphorus or nitrogen, or both.

(vii) Toxic substances: In cases where complex wastes (those containing or potentially containing toxicants) may be present in a discharge, a safety factor shall be applied to any chemical or whole effluent toxicity allocation. The limit for a specific chemical constituent shall be allocated at one-half of the normal standard at design conditions. Whole effluent toxicity shall be allocated to protect for chronic toxicity at an effluent concentration equal to twice that which is acceptable under design conditions. In all instances there may be no acute toxicity in an effluent concentration of Ammonia toxicity shall be evaluated according to EPA guidelines promulgated in "Ambient Water

Statutory Authority G.S. 143-214.1; 143-215.3(a)(1).

#### .0224 HIGH QUALITY WATERS

High Quality Waters (HQW) are a subset of waters with quality higher than the standards and are as described by 15A NCAC 2B .0101(e)(5). The following procedures shall be implemented in order to implement the requirements of Rule .0201(d) of this Section.

(1) New or expanded wastewater discharges in High Quality Waters shall comply with the following:

(a) Discharges from new single family residences shall be prohibited. Those existing subsurface systems for single family residences which fail and must discharge shall install a septic tank,

Quality Criteria for Ammonia - 1984"; EPA document number 440/5-85-001; NTIS number PB85-227114; July 29, 1985 (50 FR 30784) or "Ambient Water Quality Criteria for Ammonia (Saltwater) - 1989"; EPA document number 440/5-88-004; NTIS number PB89-169825. This material related to ammonia toxicity is hereby incorporated by reference including any subsequent amendments and editions and is available for inspection at the Department of Environment, Health, and Natural Resources Library, 512 North Salisbury Street, Raleigh, North Carolina. Copies may be obtained from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161 at a cost of forty-seven dollars (\$47.00).

(c) All expanded NPDES wastewater discharges in High Quality Waters shall be required to provide the treatment described in Sub-Item (1)(b) of this Rule, except for those existing discharges which expand with no increase in permitted pollutant loading.

(2) Development activities which require an Erosion and Sedimentation Control Plan in accordance with rules established by the NC Sedimentation Control Commission or local erosion and sedimentation control program approved in accordance with 15A NCAC 4B .0218, and which drain to and are within one mile of High Quality Waters (HQW) shall be required to ~~control runoff from the one inch design storm as follows: follow the stormwater management rules as specified in 15A NCAC 2H .1000. Stormwater management requirements specific to HQW are described in 15A NCAC 2H .1006.~~

(a) ~~Low Density Option: Developments which limit single family developments to one acre lots and other type developments to 12 percent built upon area, have no stormwater collection system as defined in 15A NCAC 2H .1002(13), and have built upon areas at least 30 feet from surface waters shall be deemed to comply with this requirement, unless it is determined that additional runoff control measures are required to protect the water quality of High Quality Waters necessary to maintain existing and anticipated uses of those waters, in which case more stringent stormwater runoff control measures may be required on a case by case basis. Activities conforming to the requirements described in 15A NCAC 2H .1003(a) [except for Subparagraphs (2) and (3) which apply only to waters within the 20 coastal counties as defined in 15A NCAC 2H .1002(9)] shall also be deemed to comply with this requirement, except as provided in the preceding sentence.~~

(b) ~~High Density Option: Higher density develop-~~

ments shall be allowed if stormwater control systems utilizing wet detention ponds as described in 15A NCAC 2H .1003(i), (k) and (l) are installed, operated and maintained which control the runoff from all built upon areas generated from one inch of rainfall, unless it is determined that additional runoff control measures are required to protect the water quality of High Quality Waters necessary to maintain existing and anticipated uses of those waters, in which case more stringent stormwater runoff control measures may be required on a case by case basis. The size of the control system must take into account the runoff from any pervious surfaces draining to the system.

(e) All waters classified WS I or WS II and all waters located in the 20 coastal counties as defined in Rule 15A NCAC 2H .1002(9) are excluded from this requirement since they already have requirements for nonpoint source controls.

If an applicant objects to the requirements to protect high quality waters and believes degradation is necessary to accommodate important social and economic development, the applicant can contest these requirements according to the provisions of G.S. 143-215.1(e) and 150B-23.

*Statutory Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).*

#### **.0225 OUTSTANDING RESOURCE WATERS**

(a) General. In addition to the existing classifications, the Commission may classify certain unique and special surface waters of the state as outstanding resource waters (ORW) upon finding that such waters are of exceptional state or national recreational or ecological significance and that the waters have exceptional water quality while meeting the following conditions:

- (1) there are no significant impacts from pollution with the water quality rated as excellent based on physical, chemical or biological information;
- (2) the characteristics which make these waters unique and special may not be protected by the assigned narrative and numerical water quality standards.

(b) Outstanding Resource Values. In order to be classified as ORW, a water body must exhibit one or more of the following values or uses to demonstrate it is of exceptional state or national recreational or ecological significance:

- (1) there are outstanding fish (or commercially important aquatic species) habitat and fisheries; there is an unusually high level of water-based recreation or the potential for such recreation; the waters have already received some special designation such as a North Carolina or National Wild and Scenic River, Native or Special Native Trout Waters, National Wildlife Refuge, etc,
- (2)
- (3)

which do not provide any water quality protection;

(4) the waters represent an important component of a state or national park or forest; or

(5) the waters are of special ecological or scientific significance such as habitat for rare or endangered species or as areas for research and education.

(c) Quality Standards for ORW.

(1) Freshwater: Water quality conditions shall clearly maintain and protect the outstanding resource values of waters classified ORW. Management strategies to protect resource values shall be developed on a site specific basis during the proceedings to classify waters as ORW. At a minimum, no new discharges or expansions of existing discharges shall be permitted, and stormwater controls for all new development activities requiring an Erosion and Sedimentation Control Plan in accordance with rules established by the NC Sedimentation Control Commission or an appropriate local erosion and sedimentation control program shall be required to control stormwater runoff as follows: follow the stormwater provisions as specified in 15A NCAC 2H .1000. Specific stormwater requirements for ORW areas are described in 15A NCAC 2H .1007.

(A) Low Density Option: Developments which limit single family developments to one acre lots and other type developments to 12 percent built upon area, have no stormwater collection system as defined in 15A NCAC 2H .1002(13), and have built upon areas at least 30 feet from surface water areas shall be deemed to comply with this requirement, unless it is determined that additional runoff control measures are required to protect the water quality of Outstanding Resource Waters necessary to maintain existing and anticipated uses of these waters, in which case such additional stormwater runoff control measures may be required on a case by case basis.

(B) High Density Development: Higher density developments shall be allowed if stormwater control systems utilizing wet detention ponds as described in 15A NCAC 2H .1003(i), (k) and (l) are installed, operated and maintained which control the runoff from all built upon areas generated from one inch of rainfall, unless it is determined that additional runoff control measures are required to protect the water quality of Outstanding Resource Waters necessary to maintain existing and anticipated uses of these waters, in which case such additional stormwater runoff control measures may be required on a case by case basis. The

~~size of the control system must take into account the runoff from any pervious surfaces draining to the system.~~

(2) Saltwater: Water quality conditions shall clearly maintain and protect the outstanding resource values of waters classified ORW. Management strategies to protect resource values shall be developed on a site-specific basis during the proceedings to classify waters as ORW. At a minimum, new development shall comply with the ~~low density options as specified in the Stormwater Runoff Disposal rules [15A NCAC 2H .1003 (a)(2)] within 575 feet of the mean high water line of the designated ORW area. stormwater provisions as specified in 15A NCAC 2H .1000. Specific stormwater management requirements for saltwater ORWs are described in 15A NCAC 2H .1007(a).~~ New non-discharge permits shall be required to meet reduced loading rates and increased buffer zones, to be determined on a case-by-case basis. No dredge or fill activities shall be allowed where significant shellfish or submerged aquatic vegetation bed resources occur, except for maintenance dredging, such as that required to maintain access to existing channels and facilities located within the designated areas or maintenance dredging for activities such as agriculture. A public hearing is mandatory for any proposed permits to discharge to waters classified as ORW.

Additional actions to protect resource values shall be considered on a site specific basis during the proceedings to classify waters as ORW and shall be specified in Paragraph (e) of this Rule. These actions may include anything within the powers of the commission. The commission shall also consider local actions which have been taken to protect a water body in determining the appropriate state protection options. Descriptions of boundaries of waters classified as ORW are included in Paragraph (e) of this Rule and in the Schedule of Classifications (15A NCAC 2B .0302 through .0317) as specified for the appropriate river basin and shall also be described on maps maintained by the Division of Environmental Management.

(d) Petition Process. Any person may petition the Commission to classify a surface water of the state as an ORW. The petition shall identify the exceptional resource value to be protected, address how the water body meets the general criteria in Paragraph (a) of this Rule, and the suggested actions to protect the resource values. The Commission may request additional supporting information from the petitioner. The Commission or its designee shall initiate public proceedings to classify waters as ORW or shall inform the petitioner that the waters do not meet the criteria for ORW with an explanation of the basis for this decision. The petition shall be sent to:

Director

DEHNR/Division of Environmental Management  
P.O. Box 29535

Raleigh, North Carolina 27626-0535

The envelope containing the petition shall clearly bear the notation: RULE-MAKING PETITION FOR ORW CLASSIFICATION.

(e) Listing of Waters Classified ORW with Specific Actions. Waters classified as ORW with specific actions to protect exceptional resource values are listed as follows:

- (1) Roosevelt Natural Area [White Oak River Basin, Index Nos. 20-36-9.5-(1) and 20-36-9.5-(2)] including all fresh and saline waters within the property boundaries of the natural area shall have only new development which complies with the low density option in the stormwater rules as specified in 15A NCAC 2H .1003(a)(2) within 575 feet of the Roosevelt Natural Area (if the development site naturally drains to the Roosevelt Natural Area).
- (2) Chattooga River ORW Area (Little Tennessee River Basin and Savannah River Drainage Area): the following undesignated waterbodies that are tributary to ORW designated segments shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section. However, expansions of existing discharges to these segments shall be allowed if there is no increase in pollutant loading:
  - (A) North and South Fowler Creeks,
  - (B) Green and Norton Mill Creeks,
  - (C) Cane Creek,
  - (D) Ammons Branch,
  - (E) Glade Creek, and
  - (F) Associated tributaries.
- (3) Henry Fork ORW Area (Catawba River Basin): the following undesignated waterbodies that are tributary to ORW designated segments shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section:
  - (A) Ivy Creek,
  - (B) Rock Creek, and
  - (C) Associated tributaries.
- (4) South Fork New and New Rivers ORW Area [New River Basin (Index Nos. 10-1-33.5 and 10)]: the following management strategies, in addition to the discharge requirements specified in Subparagraph (c)(1) of this Rule, shall be applied to protect the designated ORW areas:
  - (A) Stormwater controls described in Subparagraph (c)(1) of this Rule shall apply within one mile and draining to the designated ORW areas;
  - (B) New or expanded NPDES permitted wastewater discharges located upstream of the designated ORW shall be permitted such that the following water quality standards are

maintained in the ORW segment:

- (i) the total volume of treated wastewater for all upstream discharges combined shall not exceed 50 percent of the total instream flow in the designated ORW under 7Q10 conditions;
- (ii) a safety factor shall be applied to any chemical allocation such that the effluent limitation for a specific chemical constituent shall be the more stringent of either the limitation allocated under design conditions (pursuant to 15A NCAC 2B .0206) for the normal standard at the point of discharge, or the limitation allocated under design conditions for one-half the normal standard at the upstream border of the ORW segment;
- (iii) a safety factor shall be applied to any discharge of complex wastewater (those containing or potentially containing toxicants) to protect for chronic toxicity in the ORW segment by setting the whole effluent toxicity limitation at the higher (more stringent) percentage effluent determined under design conditions (pursuant to 15A NCAC 2B .0206) for either the instream effluent concentration at the point of discharge or twice the effluent concentration calculated as if the discharge were at the upstream border of the ORW segment;
- (C) New or expanded NPDES permitted wastewater discharges located upstream of the designated ORW shall comply with the following:
  - (i) Oxygen Consuming Wastes: Effluent limitations shall be as follows: BOD = 5 mg/1, and NH3-N = 2 mg/1;
  - (ii) Total Suspended Solids: Discharges of total suspended solids (TSS) shall be limited to effluent concentrations of 10 mg/l for trout waters and to 20 mg/l for all other waters;
  - (iii) Emergency Requirements: Failsafe treatment designs shall be employed, including stand-by power capability for entire treatment works, dual train design for all treatment components, or equivalent failsafe treatment designs;
  - (iv) Nutrients: Where nutrient overenrichment is projected to be a concern, appropriate effluent limitations shall be set for phosphorus or nitrogen, or both.
- (5) Old Field Creek (New River Basin): the undesignated portion of Old Field Creek (from its source to Call Creek) shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this

Section.

(6) In the following designated waterbodies, no additional restrictions shall be placed on new or expanded marinas. The only new or expanded NPDES permitted discharges that shall be allowed shall be non-domestic, non-process industrial discharges. The Alligator River Area (Pasquotank River Basin) extending from the source of the Alligator River to the U.S. Highway 64 bridge including New Lake Fork, North West Fork Alligator River, Juniper Creek, Southwest Fork Alligator River, Scouts Bay, Gum Neck Creek, Georgia Bay, Winn Bay, Stumpy Creek Bay, Stumpy Creek, Swann Creek (Swann Creek Lake), Whipping Creek (Whipping Creek Lake), Grapevine Bay, Rattlesnake Bay, The Straits, The Frying Pan, Coopers Creek, Babbitt Bay, Goose Creek, Milltail Creek, Boat Bay, Sandy Ridge Gut (Sawyer Lake) and Second Creek, but excluding the Intracoastal Waterway (Pungo River-Alligator River Canal) and all other tributary streams and canals.

(7) In the following designated waterbodies, the only type of new or expanded marina that shall be allowed shall be those marinas located in upland basin areas, or those with less than 30 slips, having no boats over 21 feet in length and no boats with heads. The only new or expanded NPDES permitted discharges that shall be allowed shall be non-domestic, non-process industrial discharges.

(A) The Northeast Swanquarter Bay Area including all waters northeast of a line from a point at Lat.  $35^{\circ} 23' 51''$  and Long.  $76^{\circ} 21' 02''$  thence southeast along the Swanquarter National Wildlife Refuge hunting closure boundary (as defined by the 1935 Presidential Proclamation) to Drum Point.

(B) The Neuse-Southeast Pamlico Sound Area (Southeast Pamlico Sound Section of the Southeast Pamlico, Core and Back Sound Area); (Neuse River Basin) including all waters within an area defined by a line extending from the southern shore of Ocracoke Inlet northwest to the Tar-Pamlico River and Neuse River basin boundary, then southwest to Ship Point.

(C) The Core Sound Section of the Southeast Pamlico, Core and Back Sound Area (White Oak River Basin), including all waters of Core Sound and its tributaries, but excluding Nelson Bay, Little Port Branch and Atlantic Harbor at its mouth, and those tributaries of Jarrett Bay that are closed to shellfishing.

(D) The Western Bogue Sound Section of the Western Bogue Sound and Bear Island Area (White Oak River Basin) including all waters within an area defined by a line from the western most point on Bear Island to the northeast mouth of Goose Creek on the mainland, east to the southwest mouth of Queen Creek, then south to green marker No. 49, then northeast to the northern

(E) The Stump Sound Area (Cape Fear River Basin) including all waters of Stump Sound and Alligator Bay from marker Number 17 to the western end of Permuta Island, but excluding Rogers Bay, the Kings Creek Restricted Area and Mill Creek.

(F) The Topsail Sound and Middle Sound Area (Cape Fear River Basin) including all estuarine waters from New Topsail Inlet to Mason Inlet, including the Intracoastal Waterway and Howe Creek, but excluding Pages Creek and Futch Creek.

(8) In the following designated waterbodies, no new or expanded NPDES permitted discharges and only new or expanded marinas with less than 30 slips, having no boats over 21 feet in length and no boats with heads shall be allowed.

(A) The Swanquarter Bay and Juniper Bay Area (Tar-Pamlico River Basin) including all waters within a line beginning at Juniper Bay Point and running south and then west below Great Island, then northwest to Shell Point and including Shell Bay, Swanquarter and Juniper Bays and their tributaries, but excluding all waters northeast of a line from a point at Lat.  $35^{\circ} 23' 51''$  and Long.  $76^{\circ} 21' 02''$  thence southeast along the Swanquarter National Wildlife Refuge hunting closure boundary (as defined by the 1935 Presidential Proclamation) to Drum Point and also excluding the Blowout Canal, Hydeland Canal, Juniper Canal and Quarter Canal.

(B) The Back Sound Section of the Southeast Pamlico, Core and Back Sound Area (White Oak River Basin) including that area of Back Sound extending from Core Sound west along Shackleford Banks, then north to the western most point of Middle Marshes and along the northwest shore of Middle Marshes (to include all of Middle Marshes), then west to Rush Point on Harker's Island, and along the southern shore of Harker's Island back to Core Sound.

(C) The Bear Island Section of the Western Bogue Sound and Bear Island Area (White Oak River Basin) including all waters within an area defined by a line from the western most point on Bear Island to the northeast mouth of Goose Creek on the mainland, east to the southwest mouth of Queen Creek, then south to green marker No. 49, then northeast to the northern

most point on Huggins Island, then southeast along the shoreline of Huggins Island to the southeastern most point of Huggins Island, then south to the northeastern most point on Dudley Island, then southwest along the shoreline of Dudley Island to the eastern tip of Bear Island.

- (D) The Masonboro Sound Area (Cape Fear River Basin) including all waters between the Barrier Islands and the mainland from Carolina Beach Inlet to Masonboro Inlet.
- (9) Black and South Rivers ORW Area (Cape Fear River Basin) [Index Nos. 18-68-(0.5), 18-68-(3.5), 18-68-(11.5), 18-68-12-(0.5), 18-68-12-(11.5), and 18-68-2]: the following management strategies, in addition to the discharge requirements specified in Subparagraph (c)(1) of this Rule, shall be applied to protect the designated ORW areas:
  - (A) Stormwater controls described in Subparagraph (c)(1) of this Rule shall apply within one mile and draining to the designated ORW areas;
  - (B) New or expanded NPDES permitted wastewater discharges located one mile upstream of the stream segments designated ORW (upstream on the designated mainstem and upstream into direct tributaries to the designated mainstem) shall comply with the following discharge restrictions:
    - (i) Oxygen Consuming Wastes: Effluent limitations shall be as follows: BOD = 5 mg/l and NH<sub>3</sub>-N = 2 mg/l;
    - (ii) Total Suspended Solids: Discharges of total suspended solids (TSS) shall be limited to effluent concentrations of 20 mg/l;
    - (iii) Emergency Requirements: Failsafe treatment designs shall be employed, including stand-by power capability for entire treatment works, dual train design for all treatment components, or equivalent failsafe treatment designs;
    - (iv) Nutrients: Where nutrient overenrichment is projected to be a concern, appropriate effluent limitations shall be set for phosphorus or nitrogen, or both.
    - (v) Toxic substances: In cases where complex discharges (those containing or potentially containing toxicants) may be currently present in the discharge, a safety factor shall be applied to any chemical or whole effluent toxicity allocation. The limit for a specific chemical constituent shall be allocated at one-half of the normal standard at design conditions. Whole effluent toxicity shall be allocated to protect for chronic toxicity at an effluent concentration equal to twice that which is acceptable

under flow design criteria (pursuant to 15A NCAC 2B .0206).

Statutory Authority G.S. 143-214.1.

\* \* \* \* \*

**N**otice is hereby given in accordance with G.S. 150B-21.2 that the EHNR/Environmental Management Commission intends to amend rule cited as 15A NCAC 2B .0304. Text shown in *italics* has been adopted by the EMC and is pending approval by the Rules Review Commission. Proposed effective date for the text in *italics* is January 1, 1996. Text shown in **bold italics** has been proposed to be amended effective April 1, 1996, published in Volume 10 Issue 15 of the North Carolina Register.

Proposed Effective Date: *May 1, 1996.*

**A Public Hearing** will be conducted at 7:00 pm on February 6, 1996 at Waynesville Town Hall (Board Room), 106 South Main Street, Waynesville, NC.

**Reason for Proposed Action:** *The NC Department of Environment, Health, and Natural Resources on behalf of the Environmental Management Commission (EMC) will conduct a public hearing in order to receive public comments on a proposal to reclassify a portion of the Allens Creek watershed (French Broad River Basin) in Haywood County.*

*The Allens Creek watershed is approximately 8,040 acres in size and is located in Haywood County (French Broad River Basin). The watershed is currently classified as WS-I which designates those water supplies that are within watershed that are essentially natural and undeveloped and under public ownership. However, there are approximately 600 acres within the watershed that are privately owned. This land is within the Bearpen Branch and Deep Gap drainage areas of the Allens Creek watershed. Due to the existence of the private land, a WS-II water supply classification is being sought for the Bearpen Branch and a portion of the Deep Gap drainage area.*

*The proposed reclassification of Bearpen Branch to WS-II and WS-II CA (Critical Area) and a portion of Deep Gap to WS-II would require Haywood County to adopt and implement drinking water supply ordinances for these areas. The ordinances must, at a minimum, meet the state's minimum requirements for a WS-II reclassification. Currently, no permitted wastewater discharges are allowed to the Allens Creek watershed, including Deep Gap and Bearpen Branch. If reclassified to WS-II, the state would restrict permits for new wastewater discharges to those that qualify for a General Permit (for example, swimming pool filter back-washes). No permitted wastewater discharges would be allowed to the remainder of the Allens Creek watershed that*

would remain classified as WS-I.

**Comment Procedures:** The purpose of this announcement is to encourage those interested in this proposal to provide comments. You may either attend the public hearing and make relevant verbal comments or submit written comments, data or other relevant information by March 7, 1996. The Hearing Officer may limit the length of time that you may speak at the public hearing, if necessary, so that all those who wish to speak may have an opportunity to do so. We encourage you to submit comments as well.

*It is very important that all interested and potentially affected persons or parties make their views known to the EMC whether in favor of or opposed to any and all provisions of the proposed reclassification being noticed. THE EMC MAY, IN ACCORDANCE WITH N.C.G.S. 150B-21.2, MAKE CHANGES IN FINAL RULES WITHOUT RENOTICE AS LONG AS THE ADOPTED RULES DO NOT DIFFER SUBSTANTIALLY FROM THE PROPOSED RULES. IN ACCORDANCE WITH THIS AUTHORITY, THE EMC MAY ADOPT FINAL MANAGEMENT REQUIREMENTS OR RULES THAT ARE MORE OR LESS STRINGENT THAN THOSE BEING NOTICED IF THE EMC DETERMINES THAT THE FINAL ADOPTED RULES DO NOT DIFFER SUBSTANTIALLY FROM THE PROPOSED RULES. ALL INTERESTED AND POTENTIALLY AFFECTED PERSONS ARE STRONGLY ENCOURAGED TO READ THE ENTIRE ANNOUNCEMENT AND SUPPORTING INFORMATION, AND COMMENT ON THE PROPOSAL PRESENTED. The proposed effective date for final rules pursuant to this rule-making process is July 1, 1996. Written comments may be submitted to: Steve Zoufaly, DEHNR/Division of Environmental Management, PO Box 29535, Raleigh, NC 27626-0535, (919) 733-5083, ext. 566.*

**Fiscal Note:** This Rule affects the expenditures or revenues of local government funds.

## SUBCHAPTER 2B - SURFACE WATER STANDARDS: MONITORING

### SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS

#### .0304 FRENCH BROAD RIVER BASIN

(a) Places where the schedules may be inspected:

- (1) Clerk of Court:  
Avery County  
Buncombe County  
Haywood County  
Henderson County  
Madison County  
Mitchell County  
Transylvania County  
Yancey County
- (2) North Carolina Department of Environment, Health, and Natural Resources  
Asheville Regional Office

Interchange Building  
59 Woodfin Place  
Asheville, North Carolina

(b) Unnamed Streams. Such streams entering Tennessee will be classified "B."

(c) The French Broad River Basin Schedule of Classifications and Water Quality Standards was amended effective:

- (1) September 22, 1976;
- (2) March 1, 1977;
- (3) August 12, 1979;
- (4) April 1, 1983;
- (5) August 1, 1984;
- (6) August 1, 1985;
- (7) February 1, 1986;
- (8) May 1, 1987;
- (9) March 1, 1989;
- (10) October 1, 1989;
- (11) January 1, 1990;
- (12) August 1, 1990;
- (13) August 3, 1992;
- (14) October 1, 1993;
- (15) July 1, 1995;
- (16) November 1, 1995;
- (17) January 1, 1996;
- (18) April 1, 1996;
- (19) May 1, 1996.

(d) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective March 1, 1989 as follows:

- (1) Cataloochee Creek (Index No. 5-41) and all tributary waters were reclassified from Class C-trout and Class C to Class C-trout ORW and Class C ORW.
- (2) South Fork Mills River (Index No. 6-54-3) down to Queen Creek and all tributaries were reclassified from Class WS-I and Class WS-III-trout to Class WS-I ORW and Class WS-III-trout ORW.

(e) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective October 1, 1989 as follows: Cane River (Index No. 7-3) from source to Bowlens Creek and all tributaries were reclassified from Class C trout and Class C to Class WS-III trout and Class WS-III.

(f) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective January 1, 1990 as follows: North Toe River (Index No. 7-2) from source to Cathis Creek (Christ Branch) and all tributaries were reclassified from Class C trout and Class C to Class WS-III trout and Class WS-III.

(g) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 2B

.0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(h) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective October 1, 1993 as follows: Reasonover Creek [Index No. 6-38-14-(1)] from source to Reasonover Lake Dam and all tributaries were reclassified from Class B Trout to Class WS-V and B Trout, and Reasonover Creek [Index No. 6-38-14-(4)] from Reasonover Lake Dam to Lake Julia Dam and all tributaries were reclassified from Class C Trout to Class WS-V Trout.

(i) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective July 1, 1995 with the reclassification of Cane Creek [Index Nos. 6-57-(1) and 6-57-(9)] from its source to the French Broad River from Classes WS-IV and WS-IV Tr to Classes WS-V, WS-V Tr and WS-IV.

(j) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective November 1, 1995 as follows: North Toe River [Index Numbers 7-2-(0.5) and 7-2-(37.5)] from source to a point 0.2 miles downstream of Banjo Branch, including tributaries, has been reclassified from Class WS-III, WS-III Trout and WS-III Trout CA (critical area) to Class WS-IV Trout, WS-IV, WS-IV Trout CA, and C Trout.

(k) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective January 1, 1996 as follows: Stokely Hollow [Index Numbers 6-121.5-(1) and 6-121.5-(2)] from source to mouth of French Broad River has been reclassified from Class WS-II and Class WS-II CA to Class C.

(l) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended April 1, 1996 with the reclassification of the French Broad River [Index No. 6-(1)] from a point 0.5 miles downstream of Little River to Mill Pond Creek to Class WS-IV; French Broad River [Index No. 6-(51.5)] from a point 0.6 miles upstream of Mills River to Mills River to Class WS-IV CA (Critical Area), from Mills River to a point 0.1 miles upstream of Boring Mill Branch to Class C; and the Mills River [Index No. 6-54-(5)] as follows:

Option Number 1

(1) From City of Hendersonville water supply intake to a point 0.7 miles upstream of mouth of Mills River to Class WS-III, and from a point 0.7 miles upstream of mouth of Mills River to French Broad River to Class WS-III CA (Critical Area).

Option Number 2

(2) From City of Hendersonville water supply intake to a point 0.7 miles upstream of mouth

of Mills River to Class WS-II, and from a point 0.7 miles upstream of mouth of Mills River to French Broad River to Class WS-II CA (Critical Area).

(m) The Schedule of Classifications and Water Quality Standards for the French Broad River Basin was amended effective May 1, 1996: Deep Gap (Index No. 5-16-7-5) from source to a point 0.8 miles upstream of mouth and all tributaries was reclassified from Class WS-I to Class WS-II; Bearpen Branch (Index No. 5-16-7-8) from source to a point 0.5 miles upstream of mouth, including all tributaries, was reclassified from WS-I to WS-II, and Bearpen Branch from a point 0.5 miles upstream of mouth of Waynesville Water Supply Reservoir (Allen Creek), including tributaries, was reclassified from WS-I to WS-II CA (Critical Area).

Statutory Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).

\* \* \* \* \*

**N**otice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Division of Environmental Management intends to amend rules cited as 15A NCAC 2C .0201 - .0211, .0213 - .0214; and adopt rules cited as 15A NCAC 2C .0215 - .0216.

Proposed Effective Date: May 1, 1996.

A Public Hearing will be conducted at 7:00 p.m. on December 12, 1995 at the Archdale Building, Ground Floor Hearing Room, 512 N. Salisbury Street, Raleigh, NC.

**Reason for Proposed Action:** Amendments to 15A NCAC 2C .0200 reflect the adoption of G.S. 143-215.1A providing for "closed loop groundwater remediation systems". New "area of review" criteria, permitting, classification, and well construction requirements are specified for Class V injection wells. Amendments clarify corrective action requirements for improperly constructed injection wells. Amends rules to require that well owners notify the State of any change-of-status of an injection well. Proposes the adoption of new requirements for variances and delegation of regulatory authority.

**Comment Procedures:** Interested persons may contact David Hance at (919) 715-6189 for more information. Oral comments may be made during the hearing. All written comments must be submitted by December 15, 1995. Written copies of oral statements exceeding three minutes are requested. Oral statements may be limited at the discretion of the hearing officer. Mail comments to: David Hance, DEHNR-DEM Groundwater Section, P.O. Box 29578, Raleigh, NC 27626-0578.

**Fiscal Note:** These Rules do not affect the expenditures or revenues of local government or state funds.

**SUBCHAPTER 2C - WELL  
CONSTRUCTION STANDARDS**

**SECTION .0200 - CRITERIA AND  
STANDARDS APPLICABLE TO  
INJECTION WELLS**

**.0201 PURPOSE**

These Regulations establish classes of injection wells and set forth requirements and procedures for permitting, construction, constructing, operation, operating, monitoring, reporting reporting, and abandonment abandoning of approved types of injection wells and abandonment, abandoning, monitoring monitoring, and reporting of non-permitted wells used for the injection of wastes or contaminants. The any substance of a composition and concentration such that, if it were discharged to the land or waters of the state, would create a threat to human health or would otherwise render those waters unsuitable for their intended best usage. Except as provided for in G.S. 143-215.1A, the discharge of any wastes to the subsurface or groundwaters of the state by means of wells is prohibited by G.S. 143-214.2(b).

*Statutory Authority G.S. 87-84; 87-87; 87-88; 87-94; 87-95; 143-211; 143-214.2(b); 143-215.1A; 143-215.3(a)(1); 143-215.3(c).*

**.0202 SCOPE**

These Regulations apply to all persons proposing to construct, alter, repair, or abandon any injection well, or owning, using or operating, or proposing to use or operate any well for injection.

*Statutory Authority G.S. 87-86; 87-87; 143-211; 143-215.1A; 143-215.3(a)(1); 143-215.3(c).*

**.0203 CONFLICT WITH OTHER LAWS AND  
REGULATIONS**

The provisions of any federal, state, county, or municipal law laws or regulations establishing injection well standards affording greater protection to the public welfare, safety, and health and to the groundwater resources shall prevail within the jurisdiction of such agency or municipality, over standards established by these Regulations.

*Statutory Authority G.S. 87-87; 87-96; 143-211; 143-215.1A; 143-215.3(a)(1); 143-215.3(c).*

**.0204 DEFINITIONS**

The definition of any word or phrase used in these Regulations shall be the same as given in G.S. 87-85 and G.S. 143-213, except that the following words and phrases shall have the following meanings:

(1) "Abandonment or Plugging Record" means a systematic listing of permanent or temporary

abandonment of a well and may contain a well log or description of amounts and types of abandonment material used, the method employed for abandonment, a description of formation location, formation thickness, and location of abandonment structures.

(2) "Casing" means pipe or tubing of appropriate materials and having specified dimensions and weights, that is installed in a borehole, of varying diameter and weight, lowered into a borehole during or after drilling in order to support the sides of the hole and thus prevent the walls from caving, to prevent loss of drilling mud into permeable strata, or to prevent water, gas, or other fluid from entering or leaving the hole.

(2) "Air Injection Well or Air Sparging Well" means a well that is used to inject uncontaminated air to the subsurface to promote volatilization and enhance bioremediation of contaminants in the groundwater and soil.

(3) "Aquifer Test Well" means a well into which uncontaminated water is injected in order to facilitate the assessment of local aquifer characteristics such as permeability, hydraulic conductivity, storage coefficient, or transmissivity. This includes slug tests which assess aquifer characteristics by the addition of a known volume of water to cause an instantaneous change in the water level of the well.

(4) "Area Permit" means a permit that regulates all injection activities within the associated Area of Review.

(5) "ASTM" means the American Society for Testing and Materials.

(6) "Catastrophic Collapse" means the sudden and utter failure of overlaying strata caused by removal of underlying materials.

(7) "Closed-Loop Geothermal Injection Well System" means a system of continuous piping, part of which is installed in the subsurface, through which moves a fluid that does not exit the piping, and which is used to transfer heat energy to and from the fluid.

(8) "Closed-Loop Groundwater Remediation System" means a system and attendant processes used for improving the quality of contaminated groundwater by collecting or pumping groundwater, treating the groundwater to reduce the concentration of or remove contaminants, and reintroducing the treated water beneath the surface in such a manner that the treated groundwater will be recaptured by the collecting or pumping portion of the system.

(9) "Compliance Boundary" means a boundary as specified by 15A NCAC 2L (Classifications and Water Quality Standards Applicable To The Groundwaters of North Carolina), at and beyond which groundwater quality standards may not be

(10) exceeded.  
 "Confined or Enclosed Space" means any space, having a limited means of ingress or egress, which is subject to the accumulation of toxic or flammable contaminants or has an oxygen deficient atmosphere.

(4) (11) "Confining Zone" means a geological formation, group of formations, or part of a formation that is capable of limiting fluid movement ~~above or below an injection zone~~.

(5) (12) "Contaminant" means any physical, chemical, biological or radiological substance or matter which, if injected, may cause a violation of any water quality standard under 15A NCAC 2L, and/or ~~may~~ adversely affect the health of ~~humans~~ ~~humans, or may degrade the quality of the groundwater.~~

(13) "Contamination" means ~~foreign materials of such nature, quality, and quantity as to cause degradation of the quality of the water.~~

(6) (14) "Director" means the Director of the Division of Environmental Management ~~or his delegate.~~

(15) "Division" means the Division of Environmental Management.

(7) (16) "Facility, Operation, or Activity" means any injection well or system.

(8) "Fault" means a surface or zone of rock fracture along which there has been displacement.

(9) (17) "Flow Rate" means the volume per unit time of a fluid which emerges from an orifice, pump, or turbine or passes along a conduit or channel.

(10) (18) "Fluid" means a material or substance which flows or moves; whether in a semisolid, liquid, sludge, gas, or any other form or state.

(11) (19) "Formation Fluid" means fluid present in a formation under natural ~~conditions as opposed to conditions.~~ ~~This does not include~~ introduced fluids, such as drilling mud and ~~grout.~~ ~~grout, used to facilitate the construction or development of a well.~~

(12) (20) "Generator" means any person, by site location, whose act or process produces hazardous waste.

(13) (21) "Groundwater" means "Groundwaters" mean those waters in the saturated zone of the water-bearing consolidated and unconsolidated formations occurring in the subsurface under saturated conditions.

(14) (22) "Grout" means a mixture of not more than 6 gallons of clear, water to one 94 pound bag of portland cement. The mixture may contain additives in proper amounts as necessary to reduce shrinkage and increase compatibility of the grout to injection and formation fluids, well construction material as specified in 15A NCAC 2C .0100 (Criteria and Standards Applicable to Water

(15) Supply and Certain Other Wells).  
 (23) "Hazardous Waste" means any solid, semi-solid, liquid, or contained gaseous waste or combination thereof, which because of its quantity, concentration, or physical, chemical or infectious characteristic may:

(a) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(b) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

(16) (24) "Hazardous Waste Management Facility" means all contiguous land and structures, and other appurtenances and improvements on the land used for treating, storing, or disposing of hazardous waste. A facility may consist of several treatment, storage, or disposal operational units (for example, one or more landfills, surface impoundments, or combination of them).

(25) "Hose Bibb or Tap" means a fluid sampling port located on or appurtenant to a well.

(26) "Hydraulic Conductivity" means the rate at which a unit volume of fluid of a specific density, viscosity and temperature can flow through a permeable medium of unit cross section and under unit hydraulic gradient.

(27) "Injectant" means any solid or fluid that is emplaced in the subsurface by means of an injection well.

(17) (28) "Injection" means emplacement or discharge into the subsurface of a solid or fluid substance or material, ~~material, except This definition excludes~~ drilling fluids, grout used in association with well construction or abandonment, and fluids used in connection with well development, rehabilitation or stimulation.

(18) (29) "Injection Well" means any excavation which is cored, bored, drilled, jetted, dug, or otherwise constructed, whose depth is greater than its largest surface dimension and which is used, or intended to be used, for the injection of fluids or solids into the subsurface or groundwaters.

(19) (30) "Injection Zones Zone" means a geological formation, group of formations, or part of a formation receiving fluids through a well.

(20) (31) "Lithology" means the description of rocks or sediments on the basis of their physical and chemical characteristics.

(21) (32) "Major Facility" means a Class 1 or 4 well.

(33) "Mechanical Integrity" means:

(a) ~~an absence of a leak in the casing, tubing, or packer of an injection well; and~~

(b) ~~an absence of any significant fluid movement~~

(34) into an underground source of drinking water through vertical channels adjacent to the injection well bore.

(34) "Monitoring Well" means any well constructed for the primary purpose of obtaining samples of groundwater or other liquids for examination or testing, or for the observation or measurement of groundwater levels. This definition excludes lysimeters, tensiometers, and other devices used to investigate the characteristics of the unsaturated zone.

(22) (35) "Owner or Operator" means the owner or operator of any facility or activity: any person who holds the fee or other property rights in the well being constructed. A well is real property and its construction on land will be deemed to vest ownership in the land owner, for purposes of this Section and statutes governing groundwater, in the absence of contrary agreement in writing.

(23) "Packer" means a device lowered into a well which can be expanded to produce a water tight seal.

(24) (36) "Permit" means an authorization, license, or equivalent control document issued by the Director to implement the requirements of these Regulations.

(25) (37) "Plugging" "Plug" means the act or process of stopping the flow of fluids into or out of a formation through a borehole or well penetrating that formation.

(26) (38) "Potable Water" means those waters which are suitable for drinking, culinary, or food processing purposes.

(27) (39) "Pressure" means the total load or force per unit area acting on a surface.

(28) (40) "Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

(41) "Receptor" means any human, plant, animal, or structure which is, or has the potential to be, adversely affected by the release or migration of contaminants. Any well constructed for the purpose of monitoring groundwater and contaminant concentrations shall not be considered a receptor.

(29) "Stratum (plural strata)" means a single sedimentary bed or layer, regardless of thickness, that consists of generally the same kind of rock or sedimentary material.

(30) (42) "Subsidence" means the lowering of the natural land surface in response to: earth movements; reduction of formation fluid pressure; removal of underlying supporting material by mining or solution of solids, either artificially or from natural causes; compaction due to wetting (Hydrocompaction); oxidation of organic matter in soils; or added load on the land surface.

(31) "Surface Casing" means the first string of casing to be installed in the well.

(43) "Thermal Waste" means a waste having a temperature which is in excess of 30 degrees Fahrenheit above or below the naturally occurring temperature of the receiving groundwater, as determined by the Director.

(44) "Transmissivity" means the product of the hydraulic conductivity and the total saturated thickness of a porous or fractured medium.

(32) (45) "Underground Sources of Drinking Water" means any groundwater source an aquifer or its portion:

(a) which supplies any public water system; or

(b) which contains a sufficient quantity of groundwater to supply a public water supply system; and

(i) currently supplies drinking water for human consumption; or

(ii) contains fewer than 10,000 milligrams per liter of total dissolved solids.

(33) (46) "Waste" shall mean and include "Thermal Waste" for purposes of groundwater quality means discharges having a temperature which is in excess of 30 degrees Fahrenheit above or below the naturally occurring temperature of the receiving groundwater as determined by the Director. means waste as defined in G.S. 143-213(18).

(47) "Well head" means the upper terminal of the well including adapters, ports, valves, seals, and other attachments.

(34) "Well Stimulation" means processes used to clean the well bore, enlarge channels and increase pore space in the injection zone, thus making it possible for the injected fluid to move more readily into the formation, and includes surging, jetting, blasting, acidizing, and hydraulic fracturing.

(48) "Well System" means two or more wells serving the same facility.

Statutory Authority G.S. 87-85; 87-87; 143-213; 143-215.1A.

#### .0205 AREA OF REVIEW

(a) The area of review for an injection well or field, well field project or area of the state shall be a fixed radius around the well, well or well field or project of 3000 feet 1/4 mile (1320 feet) or greater, as determined by the Director, for the following Class 5 well types: In determining the fixed radius the following factors shall be taken into consideration by the Director:

- (1) physical and chemical characteristics of the injected and formation fluids;
- (2) injection rate and pressure;
- (3) hydrogeology;
- (4) population and groundwater use and dependence; and

- (5) historical practices in the area.
- (1) Type 5A7 - Heating/Cooling Water Return Well
- (2) Type 5I - In-situ Groundwater Remediation Well
- (3) Type 5L - Closed-Loop Groundwater Remediation Well
- (4) Type 5P - Air Injection Well
- (5) Type 5Q - Closed Loop Geothermal Injection Well System
- (6) Type 5X30 - Aquifer Test Well

(b) In determining a fixed radius greater than 1/4 mile, the following factors shall be taken into consideration by the Director:

- (1) physical and chemical characteristics of the injected and formation fluids;
- (2) injection rate and pressure;
- (3) hydrogeology;
- (4) population and its groundwater use and dependence; and
- (5) historical practices in the area.

(c) For all other Class 5 well types which can be approved under these Rules, the area of review for an injection well or well field will be calculated using the procedure for determining the zone of endangering influence specified in 40 CFR 146.6(a).

Statutory Authority G.S. 87-87; 143-211; 143-215.1A; 143-215.3(a)(1); 143-215.3(c).

## .0206 CORRECTIVE ACTION

(a) Corrective action required under these Regulations for improperly sealed, completed, or abandoned wells which penetrate the injection zone and are located within the area of review shall consist of such steps or modifications as are necessary to prevent movement of fluid outside the injection zone or area.

(b) The applicant shall identify all such wells and submit a plan for corrective action with the permit application.

(c) If the plan is determined adequate, the Director shall incorporate it into the permit as a condition.

(d) If review of the application indicates that the applicant's plan is inadequate, the Director shall require the applicant to revise the plan, prescribe a plan for corrective action as a condition of the permit or deny the application.

(e) To determine the adequacy of corrective action proposed by the applicant and the additional steps needed to prevent fluid movement outside the injection zone or area, the following criteria and factors shall be considered by the Director:

- (1) nature and volume of the injected fluid;
- (2) nature of formation fluids or by products of injection;
- (3) potentially affected population;
- (4) geology;
- (5) hydrology;
- (6) history of the injection operation;
- (7) completion and plugging records;
- (8) abandonment procedures in effect at the time the

well was abandoned; and

(9) hydraulic connections with underground sources of drinking water.

(f) The Director may require, as a permit condition, that injection pressure be so limited that pressure in the injection zone does not exceed hydrostatic pressure at the site of any improperly completed or abandoned well or water supply well within the area of review. This pressure limitation shall satisfy the corrective action requirement. Alternatively, such restrictions on injection pressure may be a part of the compliance schedule for corrective action and last until all other required corrective action has been taken.

(a) Injection wells not constructed in compliance with the criteria and standards specified in these Rules shall be brought into compliance with these Rules or abandoned by the person(s) responsible for the construction of the well(s).

(b) Where operation of any injection facility is not in compliance with the requirements of these Rules, or where continued operation of the injection facility threatens any water quality standard or classification established under the authority of G.S. 143-214.1, the owner of the injection facility shall perform the following:

- (1) Stop all injection activities immediately;
- (2) Notify the Division orally within 24 hours (or the next business day), and in writing within five calendar days, of becoming aware of any instance of noncompliance;
- (3) Perform a complete site assessment and submit to the Division, as soon as practicable or in accordance with a schedule established by the Director, a report which shall include but not be limited to a description of:
  - (A) The source and cause of contamination;
  - (B) Any imminent hazards to public health and safety and actions taken to mitigate them;
  - (C) All receptors and significant exposure pathways;
  - (D) The horizontal and vertical extent of soil and groundwater contamination and all significant factors affecting contaminant transport; and
  - (E) Any geological and hydrogeological features influencing the movement or chemical or physical character of the contaminants;
- (4) Submit a corrective action plan and a proposed schedule for implementation to the Director, for approval. In establishing a schedule, the Director shall consider any reasonable schedule proposed by the permittee. The corrective action plan shall include but not be limited to:
  - (A) A description of the proposed corrective action and reasons for its selection;
  - (B) Specific plans, including engineering details where applicable for restoring the groundwater quality and for restoring the integrity of the injection facility if the injection activity is to continue;
  - (C) A schedule for the implementation and opera-

tion of the proposed plan; and  
 (D) A monitoring plan for evaluating the effectiveness of the proposed corrective action.

Statutory Authority G.S. 87-87; 87-88; 143-211; 143-215.1A; 143-215.3(a)(1); 143-215.3(c).

## .0207 MECHANICAL INTEGRITY

(a) An injection well will be considered to have mechanical integrity if:

- (1) there is no measurable leak in the casing, tubing or packer; and
- (2) there is no measurable fluid movement into an underground source of drinking water through vertical channels adjacent to the injection well bore which would result in deterioration of the water quality in zones above or below the injection zone; and
- (3) injection pressure is no greater than atmospheric pressure (i.e. 14.7 pounds per square inch).

(b) The method used to determine the absence of any measurable leaks in the casing, tubing or packer shall be conducted as follows:

- (1) monitoring of the annulus pressure; or
- (2) a pressure test with liquid or gas.

(c) The method used to determine the absence of any measurable fluid movement outside the injection zone or area shall be the results of a temperature log and other suitable methods of leak detection.

(d) (b) If the injection pressure is to be greater than atmospheric, a demonstration of the mechanical integrity of the injection facility prior to injection will be required unless it can be demonstrated to the Director's satisfaction that the methods and materials used in the construction of the well and injection operations will not result in a threat to human health or a contravention of a groundwater quality standard as specified in 15A NCAC 2L. In conducting and evaluating the tests for mechanical integrity, the owner or operator and the Director shall apply one of the following methods; and standards generally accepted in the industry. When the owner or operator reports the results of mechanical integrity tests to the Director, he shall include a description of the test(s) and the method(s) used. In making the evaluation, the Director shall review monitoring and other test data submitted since the previous evaluation.

- (1) monitoring of the annulus pressure; or
- (2) a pressure test with liquid or gas.

(c) When the owner reports the results of mechanical integrity tests to the Director, the owner shall include a description of the test(s) and the method(s) used. In making an evaluation of the data submitted, the Director may review monitoring or other test data available.

Statutory Authority G.S. 87-87; 143-211; 143-215.3(a)(1); 143-215.3(c); 143-215.1A.

## .0208 FINANCIAL RESPONSIBILITY

The permittee shall maintain financial responsibility and resources, in the form of performance bonds or other equivalent forms of financial assurances, as approved by the Director and as specified in the permit, to close, plug, and abandon the injection operation.

Statutory Authority G.S. 87-87; 87-88; 143-211; 143-215.1A; 143-215.3(a)(1); 143-215.3(c); 40 CFR Part 144.52(7); 40 CFR Part 145.11(a)(20).

## .0209 CLASSIFICATION OF INJECTION WELLS

### (a) Class I 1.

- (1) This class applies to industrial, municipal, and nuclear disposal wells that are used to inject wastes below beneath the lowermost formation containing an underground source of drinking water, and includes:
  - (A) ~~wells used by generators of hazardous wastes or owners or operators of hazardous waste management facilities to inject hazardous waste, other than Class IV wells; and~~
  - (B) ~~other industrial and municipal waste disposal well.~~
- (2) The designated type code and a description of the primary function for wells of this class will be as follows:
  - (A) Type 1H - Hazardous Waste Disposal Well. These wells are used by generators of hazardous wastes or owners of hazardous waste management facilities to inject hazardous waste.
  - (B) Type 1I - Industrial disposal well. These wells are used to inject non-hazardous industrial waste.
  - (C) Type 1M - Municipal disposal well. These wells are used to inject non-hazardous waste.
  - (D) Type 1N - Nuclear disposal well. These wells are used to inject nuclear waste.
  - (E) Type 1X - Other Class 1 wells.

- (2) (3) No person shall construct, operate or use, or operate a well of this class for injection.

### (b) Class II 2.

- (1) This class applies to oil and gas production and storage related injection wells and includes wells which are used to inject fluids:
  - (A) which are brought to the surface in connection with conventional oil or natural gas production;
  - (B) for enhanced recovery of oil or natural gas; and
  - (C) for storage of hydrocarbons which are liquid at standard temperature and pressure.
- (2) No person shall construct, use, or operate a well of this class for injection.

### (c) Class III 3.

- (1) This class applies to special process wells which are used to inject for the purpose of extraction

of minerals or energy and includes:

(A) mining of sulfur by the Frasch process;

(B) in situ production of uranium or other metals; (This category includes only in situ production from ore bodies which have not been conventionally mined. Solution mining of conventional mines, such as stopes leaching, is included in Class V.)

(C) solution mining of salts or potash;

(D) in situ combustion of fossil fuel; and

Note: Fossil fuels includes coal, tar sands, oil shale and any other fossil fuel which can be mined by this process.

(E) recovery of geothermal energy to produce electric power.

Note: Class III wells include the recovery of geothermal energy to produce electric power but do not include wells used in heating or aquaculture, which are Class V.

(2) The designated type code and a description of the primary function for wells of this class will be as follows:

(A) Type 3G - In-situ Gasification Well.

(B) Type 3M - Solution Mining Well. These wells are used in the solution mining of salts or potash.

(C) Type 3S - Sulfur Mining Well. These wells are used in the mining of sulfur by the Frasch process.

(D) Type 3T - Geothermal Well.

(E) Type 3U - Uranium mining Well.

(2) (3) No person shall construct, use, or operate a well of this class for injection.

(d) Class IV 4.

(1) This class applies to injection wells that are used to inject hazardous wastes into or above a formation containing an underground source of drinking water and includes wells used by:

(A) generators of hazardous wastes or radioactive wastes; and

(B) owners or operators of hazardous waste management facilities, or radioactive waste disposal sites.

(2) No person shall construct, use, or operate a well of this Class class for injection.

(e) Class V 5.

(1) This class applies to all injection wells not included in Class I 1, II 2, III 3, and IV 4, and includes:

(A) air conditioning return flow wells used to inject the water used for heating or cooling in a heat pump;

(B) cesspools or other devices that receive wastes which have an open bottom and sometimes have perforated sides;

(C) cooling water return flow wells used to inject water previously used for cooling;

(D) drainage wells used to drain surface fluid, primarily storm runoff, into a subsurface formation;

(E) dry wells used for the injection of wastes into a subsurface formation;

(F) recharge wells used to replenish the water in an aquifer;

(G) salt water intrusion barrier wells used to inject water into fresh water aquifer to prevent the intrusion of salt water into the fresh water;

(H) sand backfill and other backfill wells used to inject a mixture of water and sand, mill tailings, or other solids into subsurface mines, whether or not the mixture is radioactive;

(I) septic system wells used to inject discharge the waste or effluent from a septic tank or cesspool;

(J) subsidence control wells used to inject fluids into a non oil or gas producing zone to reduce or eliminate subsidence associated with the overdraft of fresh water;

(K) wells used for the storage of hydrocarbons which are gases at standard temperature and pressure;

(L) geothermal wells used in heating and aquaculture;

(M) radioactive waste disposal wells other than Class IV;

(N) wells used for solution mining of ores or minerals in conventional mines, such as stopes leaching;

(O) wells used to inject spent brine into the same formation from which it was withdrawn after extraction of halogens or their salts or after extraction of water for drinking purposes; and

(P) injection wells used in experimental technologies.

(2) The designated type code according to primary function for wells of this class will be as follows:

(A) 5A Air Conditioning/Cooling Water Return Well;

(B) 5B Salinity Barrier Well;

(C) 5D Storm Water Drainage Well;

(D) 5E Wells used in experimental technologies;

(E) 5F Agricultural Drainage Well;

(F) 5G Other Drainage Wells;

(G) 5H Gaseous Hydrocarbon Storage Well;

(H) 5N Nuclear Waste Disposal or Storage Well;

(I) 5R Recharge Well;

(J) 5S Subsidence Control Well;

(K) 5W Waste Disposal Well;

(L) 5X Other Class V Wells;

(3) No person shall construct, use or operate a well of this class for injection of waste or contaminants.

(2) The construction, use, or operation of the fol-

lowing Class 5 injection well types are prohibited. The designated type code and a description of the primary function for these wells will be as follows:

- (A) Type 5A8 - Groundwater Aquaculture Return Flow Well. These wells inject groundwater or surface water that has been used to support aquaculture.
- (B) Type 5D2 - Storm Water Drainage Well. These wells receive storm-water runoff from paved areas, including parking lots, streets, residential subdivisions, building roofs, or highways.
- (C) Type 5F1 - Agricultural Drainage Well. These wells receive irrigation tailwaters, other field drainage, animal yard, feedlot, or dairy runoff.
- (D) Type 5G30 - Special Drainage Well. These wells are used for disposing of water from sources other than direct precipitation. Examples of this well type include: landslide control drainage wells, water tank overflow drainage wells, swimming pool drainage wells, and lake control drainage wells.
- (E) Type 5H - Gaseous Hydrocarbon Storage Well. These wells are used for the storage of hydrocarbons which are gases at standard temperature and pressure.
- (F) Type 5N24 - Radioactive Waste Disposal Well. These wells are used for all radioactive waste disposal other than Class 4 wells.
- (G) Type 5W - Sewage or Wastewater Disposal Well. These wells are used to inject sewage or wastewater from any source to the groundwaters of the State. This includes but is not limited to cesspools and abandoned drinking water wells.
- (H) Type 5X13 - Mining, Sand, or Other Backfill Well. These wells are used to inject a mixture of fluid and sand, mill tailings, and other solids into mined out portions of subsurface mines whether, what is injected is a radioactive waste or not. This also includes special wells used to control mine fires and acid mine drainage wells.
- (I) Type 5X14 - Solution Mining Well. These wells are used in solution mining in conventional mines, such as stopes leaching.
- (J) Type 5X15 - In-situ Fossil Fuel Recovery Well. These wells are used for the in-situ recovery of coal, lignite, oil shale, and tar sands.
- (K) Type 5X17 - Air Scrubber Waste Disposal Well. These wells are used to inject wastes from air scrubbers.
- (L) Type 5X18 - Water Softener Regeneration Brine Disposal Well. These wells are used to

inject regeneration wastes from water softeners.

- (M) Type 5X28 - Motor Vehicle Waste Disposal Well. These wells receive wastes from motor vehicle facilities and include but are not limited to autobody repair shops, new and used car dealerships, specialty repair shops (e.g., transmission, muffler, and radiator repair shops and any facility that steam cleans or otherwise washes undercarriages or engine parts or does any vehicular repair work).

(3) The construction, use, or operation of the following Class 5 injection well types may be approved by the Director provided that the injected material does not contain any waste or any substance of a composition and concentration such that, if it were discharged to the land or waters of the state, would create a threat to human health or would otherwise render those waters unsuitable for their intended best usage. The designated type code and a description of the primary function for these wells will be as follows:

- (A) Type 5A7 - Heating/Cooling Water Return Well. These wells reinject groundwater used to provide heating or cooling for structures. These wells may be approved by the Director only if the temperature of the injection fluid is not in excess of 30 degrees Fahrenheit above or below the naturally occurring temperature of the receiving groundwater. This includes wells using a geothermal fluid source.
- (B) Type 5B22 - Salinity Barrier Well. These wells inject uncontaminated water into an aquifer to prevent the intrusion of salt water into the fresh water.
- (C) Type 5l - In-situ Groundwater Remediation Well. These wells are used to inject additives for the in-situ treatment of contaminated soil or groundwater, when such additives are determined by the Division of Epidemiology to be protective of human health and permitted by the Division.
- (D) Type 5L - Closed-Loop Groundwater Remediation Well. These wells are used to inject treated groundwater as part of a closed-loop remediation system for the prevention, control, or remediation of aquifer pollution.
- (E) Type 5P - Air Injection Well. These wells are used to inject air to enhance in-situ treatment of groundwater.
- (F) Type 5QM - Closed-Loop Geothermal-Mixed-Fluid Injection Well System. These wells are used to house a subsurface system of vertical pipe that re-circulates fluid other than potable water for heating and cooling purposes and where the fluid is isolated from the environ-

ment.

(G) Type 5OW - Closed-Loop Geothermal-Water-Only Injection Well System. These wells are used to house a subsurface system of vertical pipe that re-circulates potable water for heating and cooling purposes and where the fluid is isolated from the environment.

(H) Type 5R21 - Aquifer Recharge Well. These wells are used to recharge depleted aquifers and may inject uncontaminated water of equal or better quality than the aquifer being recharged.

(I) Type 5S23 - Subsidence Control Well. These wells are used to inject fluids into a non-oil or gas-producing zone to reduce or eliminate subsidence associated with overdraft of fresh water and not used for the purpose of oil or natural gas production.

(J) Type 5T - Tracer Well. These wells are used to inject substances determined by the Division of Epidemiology to be protective of human health and permitted by the Division.

(K) Type 5X25 - Experimental Technology Well. These wells are used in experimental or unproven technologies where operation is in compliance with all appropriate Rules and Statutes.

(L) Type 5X30 - Aquifer Test Well. These wells are used to inject uncontaminated water into an aquifer to determine aquifer characteristics.

(M) Type 5Z - Other Wells.

Statutory Authority G.S. 87-87; 87-94; 87-95; 143-211; 143-214.2(b); 143-215.1A; 143-215.3(a)(1); 143-215.3(c); 143-215.6(c).

## .0210 REQUIREMENTS: WELLS USED TO INJECT WASTE OR CONTAMINANTS

(a) The owner of any well, used for the injection of that has been used to inject wastes or contaminants, with the exception of wells permitted in accordance with this Section and constructed or in operation prior to the effective date of these Regulations, must shall take corrective action as specified in Rule .0206(b) of this Section, be reported by the owner to the Director within 30 days after their promulgation. The information reported shall include:

- (1) location of the injection well and any associated monitoring wells;
- (2) name and address of injection well owner;
- (3) name and address of well operator;
- (4) construction drawings of the injection well and injection systems to include depths, composition of construction materials, and injection system materials, etc.;
- (5) analysis of injected fluid;
- (6) date injection initially began; and
- (7) records of injection rates, pressures, volumes,

etc. during the operating period of the well.

(b) Any injection well, used for the injection of wastes or contaminants and constructed or in operation prior to the effective date of these Regulations, shall be abandoned by the owner in a manner specified by the Director within 30 days of receipt of notice from the Director. As part of abandonment, the Director may require the owner to:

- (1) install monitor wells in the injection zone and adjacent zones as necessary to detect the dispersion and migration of injection fluids within and from the injection zone;
- (2) Monitor the fluid levels and water quality in the injection and monitor wells at specified intervals;
- (3) Submit the results of monitoring at such frequencies and in such form as specified.

Statutory Authority G.S. 87-87; 87-88; 87-94; 87-95; 143-214.2; 143-215.1A; 143-215.6(c).

## .0211 PERMITS

(a) A permit shall be obtained from the Director prior to constructing, operating, or using any well for injection unless the well is deemed permitted in accordance with Paragraph (u) of this Rule. In those instances where all individual injection wells within a well field will be essentially similar with respect to construction, operation, reporting, and abandonment, and are of the same well type Type, the Director may issue an area permit for the injection operations within that same well field, facility, site, reservoir, or similar unit. No permit shall be granted for the injection of wastes or contaminants, any substance of a composition and concentration such that, if it were discharged to the land or waters of the state, would create a threat to human health or would otherwise render those waters unsuitable for their intended best usage unless specifically provided for by Statute or by these Rules.

(b) All permit applications shall be signed as follows:

- (1) for a corporation: by a principal executive director responsible corporate officer; or at least the level of vice president;
- (2) for a partnership or sole proprietorship: by a general partner or the proprietor, respectively;
- (3) for a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official; or
- (4) for all other persons: by the well owner.

(c) The person signing the permit application shall certify that the data furnished on the application is accurate and that the well will be operated in accordance with the approved specifications and conditions of the permit.

(d) An application shall be submitted, in duplicate, to the Director on forms furnished by the Director and shall include the following:

- (1) Class V Wells: Except Type 5A. For all Class 5 Well Types:
- (A) the The activities conducted by the applicant

which require it to obtain a permit well owner's and (if different from the owner) the well operator's name, address, telephone number, and status as a federal, state, private, public, or other activity;

(B) The name, mailing address, telephone number, and location of the facility for which the application is submitted and a brief description of the nature of the business;

(C) up to four Standard Industrial Codes which best reflect the principal products or services provided by the facility;

(D) the owner's and (if different than the owner) operator's name, address, telephone number, ownership status, and status as federal, state, private, public, or other entity;

(E) whether or not the facility is located on Indian lands;

(F) a topographic map (or other map if a topographic map is unavailable) extending one mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage or disposal facilities; each well where fluids from the facility are injected underground; and other wells, springs, and other surface water bodies, mines (surface and subsurface), and quarries in the map area;

(G) a brief description of the nature of the business;

(H) a map showing the injection well(s) for which a permit is sought and the applicable area of review. Within the area of review, the map shall show the name and location of all producing wells, injection wells, abandoned wells, dry well, and water wells. The map shall also show faults if known or suspected;

(I) a tabulation of data on all wells within the area of review which penetrate the proposed injection zone. Such data shall include a description of each well's type, construction, date drilled, location, depth, record of abandonment and/or completion, and any additional information the Director may require;

(J) maps and cross sections indicating the vertical and lateral limits of all underground sources of drinking water within the area of review, their position relative to the injection formation, and the direction of water movement in every underground source of drinking water which may be affected by the proposed injection;

(K) maps, cross sections and well logs detailing the hydrogeologic structure of the local area;

(L) generalized maps and cross sections illustrating the regional geologic setting;

(M) proposed operating data as follows:

(i) average and maximum daily rate and volume of fluid to be injected;

(ii) average and maximum injection pressure; and

(iii) source and an analysis of the chemical, physical, biological and radiological characteristics of the injected fluid;

(N) proposed formation testing program;

(O) proposed stimulation program;

(P) proposed injection procedure;

(Q) engineering drawings of the surface and subsurface construction details of the system;

(R) plans (including maps) for meeting the monitoring requirements for the type proposed;

(S) expected changes in pressure, formation fluid displacement, and direction of movement of injected fluid;

(T) contingency plans to cope with all shut ins or well failures so as to prevent the migration of fluids outside the injection zone or area;

(U) a certificate that the applicant has assured, through a performance bond or other appropriate means, the resources necessary to close, plug, or abandon the well as required by these regulations; and

(V) the corrective action proposed to be taken as required by these Regulations.

(C) A description of the injection activities proposed by the applicant;

(D) A scaled, site-specific map showing the location(s) of the following:

(i) the proposed injection well(s);

(ii) all property boundaries;

(iii) the direction and distance from the injection well or well system to two nearby permanent reference points (such as roads, streams, and highway intersections);

(iv) all buildings within the property boundary;

(v) any other existing or abandoned wells, including water supply and monitoring wells, within the area of review of the injection well or well system;

(vi) any existing sources of potential or known groundwater contamination, including waste storage, treatment, or disposal systems within the area of review of the injection well or well system; and

(vii) all surface water bodies within the area of review of the injection well or well system;

(E) The chemical, physical, biological, and radiological characteristics of the fluid to be injected;

(F) The proposed average and maximum daily rate and quantity of fluid to be injected;

(G) Detailed plans and specifications of the surface and subsurface construction details of the system;

(H) A listing of all permits or construction approvals, received or applied for by the applicant, that are related to the site or facility covered by this application including but not limited to:

- (i) Hazardous Waste Management program permits or approval under the Resource Conservation and Recovery Act (RCRA);
- (ii) NC Division of Environmental Management Non-Discharge permits;
- (iii) Sewage Treatment and Disposal Permits issued in accordance with G.S. 130A, Article 11; and
- (iv) Other environmental permits required by state or federal law;

(I) Up to four Standard Industrial Codes which best reflect the principal products or services provided by the facility;

(J) Whether or not the facility is located on Indian lands;

(K) Such other information as deemed necessary by the Director for the protection of human health and the environment.

(2) For Type 5A7 and 5QM Wells, in addition to the information required in Subparagraph (d)(1) of this Rule, the application shall include:

- (A) the owner's and operator's (if different than the owner) name, address and telephone number; the heating/cooling system installation contractor's name, address, and telephone number;
- (B) a location diagram of each well showing direction and distance to two nearby map reference points (such as roads, intersection, or streams);
- (C) a map showing the location of all water-supply and other injection wells within a radius of 1,000 feet of the proposed well, or greater as determined by the Director;
- (D) a diagram showing the details of construction of existing wells and of proposed wells;
- (E) the proposed injection rate and pressure;
- (F) the chemical and physical characteristics of the fluid to be injected;
- (G) engineering details of equipment with which the injected fluid comes in contact prior to discharge from the system; including type, composition, and wall thickness of piping system; and
- (H) such other information as required by these Regulations and as deemed necessary by the Director.

(3) For Type 5I and 5L Wells, in addition to the information required in Subparagraph (d)(1) of this Rule, the application shall include:

- (A) a brief description of the contamination incident and incident number assigned by Division staff in the Department's Regional Office;

(B) a site specific scaled map showing the following:

- (i) contour intervals not exceeding two feet;
- (ii) the location of all springs, lakes, ponds, or other surface drainage features within 1000 feet of the injection well or well system;
- (iii) potentiometric surface showing direction of groundwater movement; and
- (iv) the horizontal and vertical extent of the contaminant plume (include isoconcentration lines and plume cross sections);

(C) a tabulation of data on all wells within 1/4 mile of the injection well(s), excepting water supply wells serving a single-family residence which penetrate the proposed injection zone. Such data shall include a description of each well's type, depth, record of abandonment or completion, and any additional information the Director may require;

(D) a hydrogeologic description, soils description, and cross section of the subsurface to a depth that includes the known or projected depth of contamination signed and sealed by a North Carolina licensed geologist or registered engineer. The number of borings shall be sufficient to determine the following:

- (i) the regional geologic setting;
- (ii) significant changes in lithology;
- (iii) the hydraulic conductivity of the saturated zone;
- (iv) the depth to the mean seasonal high water table; and
- (v) a determination of transmissivity and specific yield of the aquifer to be used for injection (show calculations used for transmissivity and specific yield);

(E) a detailed description of the proposed injection procedure including:

- (i) average and maximum daily rate and quantity of fluid to be injected;
- (ii) average and maximum injection pressure;
- (iii) injection pressure relative to the overburden pressure of the soils and injection zone;
- (iv) injection temperature; and
- (v) demonstration of closed-loop recovery of injected and contaminated fluids;

(F) proposed concentration of any contaminant in the effluent, given any proposed pretreatment;

(G) plans for proposed location and construction details of groundwater monitoring well network including schedule for sampling and analytical methods.

(4) For Types 5B22, 5R21, 5S23, 5T, 5X25, and 5Z wells, in addition to the information required in Subparagraph (d)(1) of this Rule, the applica-

tion shall include:

- (A) a detailed description of all planned activities relating to the proposed injection facility including but not limited to:
  - (i) construction plans and materials;
  - (ii) operation procedures; and
  - (iii) planned injection schedule.
- (B) a hydrogeologic description, soils description, and cross section of the subsurface to the depth of the proposed injection zone signed and sealed by a North Carolina licensed geologist or registered engineer. The number of borings shall be sufficient to determine the following:
  - (i) the regional geologic setting;
  - (ii) significant changes in lithology;
  - (iii) the hydraulic conductivity of the saturated zone;
  - (iv) the depth to the mean seasonal high water table; and
  - (v) a determination of transmissivity and specific yield of the aquifer to be used for injection (show calculations used for transmissivity and specific yield).
- (C) plans for proposed location and construction details of groundwater monitoring well network including schedule for sampling and analytical methods.

(+) (e) All applications for a new permit or renewal, modification, or transfer of an existing permit shall be filed in sufficient time prior to construction and operation or expiration, modification, or transfer to allow compliance with all legal procedures.

(+) (f) All reports must be signed by a person described in Paragraph (b) of this Rule or by a duly authorized agent of that person. All records, reports, and information required to be submitted to the Director, and public comment on these records, reports, or information shall be disclosed to the public unless the person submitting the information can show that such information, if made public, would disclose methods or processes entitled to protection as trade secrets. The Director shall determine which information is entitled to confidential treatment. In the event the Director determines that such information is entitled to confidential treatment, he the Director shall take steps to protect such information from disclosure. He shall submit the information considered to be confidential to the Regional Administrator, EPA, Region IV, for concurrence in his determination of confidentiality.

(+) (g) The Director shall consider the cumulative effects of drilling and construction of multiple wells and operation of all proposed wells within a well field during evaluation of an area permit application.

(+) (h) Injection may not commence until construction is complete, the permittee has submitted notice of completion of construction to the Director, and the Director has inspected or otherwise reviewed the injection well and finds it in compliance with the permit conditions. If the permittee

has not received notice from the Director of intent to inspect or otherwise review the injection well within 10 days after the Director receives the notice, the permittee may commence injection. Prior to granting approval for the operation of any injection well, the Director shall consider the following information when such information is required by these Regulations:

- (1) all available logging and testing data on the well;
- (2) a satisfactory demonstration of mechanical integrity pursuant to these Regulations;
- (3) the proposed operating procedures;
- (4) the results of the formation testing program; and
- (5) the status of corrective action on defective wells in the area of review.

(+) (i) The Director may establish maximum injection volumes and pressures as necessary to assure that:

- (1) fractures are not initiated in the confining zone;
- (2) that injected fluids do not migrate outside the injection zone or area;
- (3) injected fluids do not cause or contribute to the migration of fluids beyond the compliance boundary;
- (4) that formation fluids are not displaced outside the formation; and
- (5) to assure there is compliance with operating requirements.

(+) (j) A permit shall be issued for a period not to exceed five years from the date of issuance. On expiration of the permit, the permit shall become invalid unless application is made, at least 120 days prior to the expiration date, for an extension of the subject permit.

(+) (k) The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

(+) (l) The permit may be modified, revoked and reissued, or terminated by the Director in whole or part for good cause, including but not limited to:

- (1) violation of any terms or conditions of the permit;
- (2) obtaining a permit by misrepresentation or failure to disclose fully all relevant facts;
- (3) refusal of the permittee to allow authorized employees of the Division upon proper presentation of credentials;
- (A) to enter upon permittee's premises on which a system is located in which any records are required to be kept under terms and conditions of the permit;
- (B) to have access to and copy any records re-

quired to be kept under terms and conditions of the permit;

(C) to inspect any monitoring equipment or method required in the permit; or

(D) to sample any discharge from the injection facility.

(m) The filing of an application by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

(n) The permit does not convey any property rights of any sort, or any exclusive privilege.

(o) The permittee shall furnish to the ~~director~~ Director any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit, or to determine compliance with the permit. The permittee shall also furnish to the ~~director~~ Director, upon request, copies of records required by the permit to be kept.

(p) The permittee shall allow the ~~director~~ Director, or an authorized representative, upon their presentation of credentials and other documents as may be required by law, to:

- (1) enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of the permit;
- (2) have access to and copy, at reasonable times during normal business hours, any records that must be kept under the conditions of the permit;
- (3) inspect, at reasonable times, any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the permit; and
- (4) sample or monitor, at reasonable times, and for the purposes of assuring permit compliances or as otherwise authorized, any substances or parameters.

(q) The permittee shall retain copies of records of all monitoring information, including all calibration and maintenance records, all original strip chart recordings for continuous monitoring instrumentation, and copies of all reports required by this permit, for a period of at least three years from the date of the sample, measurement, report, or application. This period may be extended, by request of the Director, at any time. Records of monitoring information shall include:

- (1) the date, exact place, and time of sampling or measurements;
- (2) the individual(s) who performed the sampling or measurements;
- (3) the date(s) analyses were performed;
- (4) the individual(s) who performed the analyses;
- (5) the analytical techniques or methods used; and
- (6) the results of any such sampling, measurements, and analyses.

(r) The permit shall not be transferable to any person

except after notice to and approval by the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be appropriate.

(s) The permittee shall report any monitoring or other information which indicates that any contaminant may cause an endangerment to an underground source of drinking water and any noncompliance with a permit condition or malfunction of the injection system which may cause fluid migration outside the injection zone or area. The information shall be provided, to the ~~director~~ Director, orally within 24 eight hours of the occurrence and as a written submission within five days of the occurrence. The written submission shall contain a description of the noncompliance and its cause, the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue, and any steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(t) The Commission may delegate, through a Memorandum of Agreement to another state agency, the authority to permit injection wells that are an integral part of a facility requiring a permit from that agency.

(u) The following injection wells are deemed to be permitted pursuant to G.S. 87-87 and it shall not be necessary for the Division to issue individual permits for construction or operation of the following Class 5 Well Types:

(1) Type 5P - Air Injection Well which meets the following criteria:

(A) The air to be injected shall not exceed the ambient air quality standards set forth in 15A NCAC 2D Section .0400 and shall not contain any detectable hazardous constituents; and

(B) The operation of the air injection well shall not cause contaminated groundwater to migrate into an area not contaminated prior to initiation of injection activities or cause a contravention of a groundwater quality standard as specified in 15A NCAC 2L.

(2) Type 5QW - Closed-Loop Geothermal-Water-Only Injection Well System which recirculates potable water only and meets the following criteria:

(A) The construction of the system shall be completed in such a manner so as to preclude surficial contaminants from entering the borehole; and

(B) The person responsible for the construction of the injection well system shall submit notification of construction to the Division on forms supplied by the Division.

(3) Type 5X30 - Aquifer Test Well which meets the following criteria:

(A) The operation of the aquifer test well shall not cause contaminated groundwater to migrate into an area not contaminated prior to initiation

of injection activities or cause a contravention of a groundwater quality standard as specified in 15A NCAC 2L; and

(B) The water to be injected shall be potable.

(4) In addition to the criteria specified in Subparagraph (u)(2) of this Rule, any test hole or boring shall be permanently abandoned by the driller in accordance with Rule .0214 of this Section within two days after drilling or two days after testing is complete, whichever is less restrictive, except when a test well is being converted to a permanent injection well, in which case conversion shall be completed within 30 days.

Authority G.S. 87-87; 87-88; 87-90; 87-94; 87-95; 143-211; 143-214.2(b); 143-215.1A; 143-215.3(a)(1); 143-215.3(c); 143-215.6(c); 40 CFR Part 144.52(7); 40 CFR Part 145.11(a)(20).

#### .0213 ADDITIONAL CRITERIA AND STANDARDS APPLICABLE TO CLASS 5 WELLS

(a) The construction or use of the following types of Class V injection wells, is prohibited:

- (1) Type 5D Storm Water Drainage Well,
- (2) Type 5H Gaseous Hydrocarbon Storage Well,
- (3) Type 5N Nuclear Waste Disposal or Storage Well, and
- (4) Type 5W Waste Disposal Well.

(b) The construction or use of the following types of Class V injection wells may be approved by the Director provided that they shall not be used or operated to inject any waste or contaminant and that injection will not result in the contamination of an underground source of drinking water:

- (1) Type 5A Air Conditioning/Cooling Water Return Well,
- (2) Type 5B Salinity Barrier Well,
- (3) Type 5E Wells Used in Experimental Technologies,
- (4) Type 5F Agricultural Drainage Well,
- (5) Type 5G Other Drainage Wells,
- (6) Type 5R Recharge Well,
- (7) Type 5S Subsidence Control Well, and
- (8) Type 5X Other Class V Wells.

(a) (e) Location.

- (1) Type 5A, 5B, 5F, 5G, 5R, 5S, and 5X wells shall be located:
  - (A) in an area not generally subject to flooding;
  - (B) at a site that is well drained;
  - (C) at a site that permits access for maintenance, repair, treatment, testing, and such other attention as may be necessary;
  - (D) at a minimum horizontal distance of 50 feet from any water-tight sewage and liquid waste collection facility (such as cast iron pipe) except in the case of wells intended for a single family dwelling where it is not feasible

to obtain 50 feet separation between a well and a water tight liquid waste collection facility because of lot size or other fixed conditions, the horizontal separation distance shall be the maximum feasible distance, but in no case less than 25 feet;

(E) at a minimum horizontal distance of 100 feet from any other sewage or liquid waste collection and disposal facility (such as a septic tank and drain field) and any other source of potential pollution or contamination, except in the case of wells intended for a single family dwelling where it is not feasible to obtain 100 feet horizontal separation between a well and a source of potential pollution or contamination because of lot size or other fixed conditions, the separation distance shall be the maximum feasible distance, but in no case less than is in conformity with all applicable federal, state, and local laws and regulations; and

(F) at a minimum horizontal distance of 10 feet from any property boundary.

(1) For all well types, the injection well shall not be located in an area generally subject to flooding. Areas which have a propensity for flooding include those with concave slope, alluvial or colluvial soils, gullies, depressions, and drainage ways.

(2) For Type 5I, and 5L wells where the concentration of any component of the injectant:

(A) exceeds the groundwater quality standards specified in 15A NCAC 2L .0202, the injection well shall not be located:

- (i) at a point where the injectant would degrade the existing quality of the groundwater in the water-bearing unit into which the injectant is being released; or
- (ii) at a point where, as a result of the injection activity, corrective action would be required under 15A NCAC 2L .0106.

(B) is less than the groundwater quality standards specified in 15A NCAC 2L .0202, the injection well shall not be located at point where the injectant would result in a contravention of any of the aforementioned groundwater quality standards in the water-bearing unit into which the injectant is being released.

(3) For all well types, the injection well must be located in an area which does not require a person to enter confined spaces to perform sampling and inspection activities.

(4) For Type 5A7, 5R21, 5S23, 5X25, and 5Z wells, the minimum horizontal separation between a well that is designed for injection at atmospheric pressure and potential sources of groundwater contamination shall be as follows unless it can be demonstrated to the Director's

satisfaction that a lesser separation distance will not result in a threat to human health or a contravention of a groundwater quality standard as specified in 15A NCAC 2L:

- (A) Septic tank and drainfield . . . . . 50 ft.
- (B) Other subsurface ground absorption waste disposal system . . . . . 50 ft.
- (C) Industrial or municipal sludge-spreading or wastewater-irrigation sites . . . . . 50 ft.
- (D) Water-tight sewage or liquid-waste collection or transfer facility . . . . . 25 ft.
- (E) Cesspools and privies . . . . . 50 ft.
- (F) Animal feedlots or manure piles . . . . . 50 ft.
- (G) Fertilizer, pesticide, herbicide, or other chemical storage areas . . . . . 50 ft.
- (H) Sanitary landfills . . . . . 500 ft.
- (I) Non-hazardous waste storage, treatment, or disposal lagoons . . . . . 100 ft.
- (J) Other non-hazardous solid waste landfills . . . . . 100 ft.
- (K) Animal barns . . . . . 50 ft.
- (L) All other potential sources of groundwater contamination . . . . . 50 ft.

(5) For all other well types the minimum horizontal separation between a well that is designed for injection and potential sources of groundwater contamination shall be the distance necessary to prevent migration of contaminants or a violation of groundwater standards as demonstrated by hydrogeologic computer modeling.

(2) The location of Type 5E wells shall be:

- (A) suitably accessible for maintenance and monitoring purposes;
- (B) a minimum horizontal distance of 100 feet from any sewage, liquid waste collection or disposal facility;
- (C) a minimum horizontal distance of 100 feet from any property boundary;
- (D) a minimum horizontal distance of 1000 feet from any water supply well and a minimum of 3000 feet from any well completed in the proposed injection zone furnishing water for municipal, industrial, commercial, agricultural, or domestic purposes; and
- (E) such that injection is into a formation which has confining zones that are free of open faults or fractures within the area of review.

(b) Drilling Fluids and Additives. Drilling fluids and additives shall not contain organic or toxic substances and may be comprised only of:

- (1) the formation material encountered during drilling; or
- (2) materials manufactured specifically for the purpose of borehole conditioning or well construction; or
- (3) materials approved by the Director.
- (4) (c) Drilling, casing, screens, and testing.

(1) In the drilling, casing, screening, and testing of injection wells, procedures will be utilized such that:

- (A) a casing is installed which extends from at least 12 inches above land surface to the top of the injection zone or to a depth of 20 feet whichever is shallower;
- (B) the methods and materials used are compatible with the material(s) to be injected and approved by the Director; well casing extending less than 12 inches above land surface may be approved by the Director only when the following conditions are met:
  - (i) site-specific conditions directly related to business activities, such as vehicle traffic, would endanger the physical integrity of the well; or
  - (ii) it is not operationally feasible for the well head to be completed 12 inches above land surface due to the engineering design requirements of the system; and
  - (iii) the well head is completed in such a manner so as to preclude surficial contaminants from entering the well; and well head protection must include:
    - (I) an accessible external sanitary seal installed around the casing and grouting;
    - (II) a sufficient vertical distance between the top of the grouting and the top of the casing to prevent any surficial fluids from entering the injection well casing; and
    - (III) a water-tight seal is installed on the top of the casing.
- (C) the methods and materials used in construction shall not threaten the physical and mechanical integrity of the well during its lifetime (i.e., it shall be designed and constructed for the life expectancy; to operate the projected life of the well) and shall be compatible with the proposed injection activities. In determining the suitability of the methods and materials to be used in the drilling, casing, screening, and testing, the Director shall consider the following:
  - (i) depth to the injection zone;
  - (ii) injection pressure, external pressure, internal pressure, and axial loading;
  - (iii) hole size;
  - (iv) size and grade of all casing (wall thickness, diameter, nominal weight, length, joint specification, and casing material);
  - (v) size and grade of all screen material (wall thickness, nominal weight, diameter, length, joint specification, and screen material);

- (vi) corrosiveness of injected and formation fluids;
- (vii) lithology of injection and confining zones;
- (viii) type and grade of cement;
- (ix) type and grade of drilling fluid and additives; and
- (x) other applicable state and local well construction and environmental standards.

(D) ~~multi-screened wells shall not connect aquifers or zones which have differences in water quality which would result in a degradation of any aquifer or zone;~~

(E) (E) the migration of fluids outside the ~~approved injection or recovery~~ zone or area is not permitted; and

(F) contaminants are not introduced into underground sources of drinking water- ~~unless specifically authorized by Statute or Rule;~~ and

(G) ~~the borehole shall not penetrate to a depth greater than the depth at which injection will occur unless the purpose of the borehole is the investigation of the geophysical and geochemical characteristics of an aquifer. Following completion of the investigation the borehole beneath the zone of injection shall be grouted completely to prevent the vertical migration of any contaminants downward.~~

(2) In determining the suitability of the methods and materials to be used in the drilling, casing, screening, and testing, the Director shall consider the following:

- (A) ~~depth to the injection zone;~~
- (B) ~~injection pressure, external pressure, internal pressure, and axial loading;~~
- (C) ~~hole size;~~
- (D) ~~size and grade of all casing (wall thickness, diameter, nominal weight, length, joint specification, and casing material);~~
- (E) ~~size and grade of all screen material (wall thickness, nominal weight, diameter, length, joint specification, and screen material);~~
- (F) ~~corrosiveness of injected and formation fluids;~~
- (G) ~~lithology of injection and confining zones;~~
- (H) ~~type and grade of cement;~~
- (I) ~~type and grade of drilling fluid and additives; and~~
- (J) ~~other state and local well construction standards.~~

(3) (2) In addition to the requirements of Subparagraphs (A) (c)(1) and (2) of this Rule, the testing requirements for all wells other than Type 5A7, 5P, and 5X30 shall include but not be limited to:

(A) Appropriate logs and other tests conducted during the drilling, and construction of the wells must be submitted to the Director within 30 days of completion of well construction. A

descriptive report interpreting the results of such logs and tests shall be prepared by a knowledgeable log analyst and submitted to the Director within 30 days of completion of the tests. The logs and tests appropriate to each type of Class V 5 well shall be determined by the Director based on the intended function, depth, construction, and other characteristics of the well, availability of similar data in the area of the drilling site, and the need for additional information that may arise from time to time as the construction of the well progresses. At a minimum, such logs and tests shall include deviation checks conducted on all holes where pilot holes and reaming are used, and at sufficiently frequent intervals to assure that vertical avenues for fluid migration in the form of diverging holes are not created during drilling. In the case of area permits, the Director may authorize ~~conduction~~ logs and tests of the well field as a whole, rather than of each individual well within the well field.

(B) When the injection zone is a water-bearing formation, the following information concerning the injection zone as determined or calculated by the owner, and shall be submitted to the Director within 30 days of completion of the determinations in an integrated form:

- (i) fluid pressure;
- (ii) fluid temperature;
- (iii) fracture pressure;
- (iv) other physical and chemical characteristics of the injection zone;
- (v) physical and chemical characteristics of the formation fluids; and
- (vi) compatibility of injected fluids with formation fluids.

(C) When the injection formation is not a water-bearing formation, only the information required in Parts Subparagraphs (B)(iii) and (iv) of this Rule must be determined or calculated and submitted to the Director within 30 days of completion of the determinations.

(D) Monitoring wells completed in the injection zone and any of those zones adjacent to the injection zone which could be affected by the injection operations. These wells shall be located in such a fashion as to detect any movement of injection fluids, process by-products, or formation fluids outside the injection area or zone. If the operation may be affected by subsidence or catastrophic collapse, the monitoring wells shall be located so that they will not be physically affected, and shall be of an adequate number to detect movement of injected fluids, process

by-products, or formation fluids outside the injection zone or area. In determining the number, location and spacing of monitoring wells, the following criteria shall be considered by the Director:

- (i) the population relying on the underground source of drinking water affected, or potentially affected, by the injection operation;
- (ii) the proximity of the injection operation to points of withdrawal of drinking water;
- (iii) the local geology and hydrology;
- (iv) the operating pressures;
- (v) the chemical characteristics and volume of the injected fluid, formation water, and process by-products; and
- (vi) the density of injection wells.

(E) For any wells that inject at a pressure exceeding atmospheric, tests for mechanical integrity and injection capacity shall be conducted prior to any injection in accordance with Rule .0207 of this Section.

(3) All piping, wiring, and vents shall enter the well through the top of the casing unless otherwise approved by the Director.

(4) A hose bibb, sampling tap or other sampling device, as approved by the Director, shall be installed on the line entering the injection well such that a sample of the injectant can be obtained immediately prior to its entering the injection well.

(e) (d) Grouting, Grouting and Sand-and-Gravel-Packing.

(1) The annular space between the casing and the borehole shall be grouted:

- (A) with a type of cement that is non-toxic and is non-reactive with the casing or screen materials, the formation, and the injected fluids;
- (B) by a pressure method such that the physical and mechanical integrity of the well(s) is not threatened during its life expectancy; and
- (C) from land surface to the top of the injection zone or, in the case of Type 5A wells, from land surface:
  - (i) to a minimum depth of 20 feet when the well is greater than 20 feet in depth; or
  - (ii) to within two feet of the top of the injection zone in those wells less than 20 feet in depth; or
  - (iii) in another configuration, as approved by the Director, necessitated by engineering design of the injection facility; and
- (D) so that the grout shall extend outward from the casing wall to a minimum thickness equal to either one-third of the diameter of the outside dimension of the casing or two inches, whichever is greater.

(2) In those instances where the life expectancy of

the well will not exceed 90 days, the Director may consider modifications or deletion of the grouting requirements where such modifications or deletion would not have a deleterious effect upon an underground source of drinking water.

(2) Grout shall be placed around the casing by one of the following methods:

- (A) Pressure. Grout shall be pumped or forced under pressure through the bottom of the casing until it fills the annular area around the casing and overflows at the surface.
- (B) Pumping. Grout shall be pumped into place through a hose or pipe extended to the bottom of the annular space which can be raised as the grout is applied. The grout hose or pipe should remain submerged in grout during the entire application.
- (C) Other. Grout may be emplaced in the annular space by gravity flow in such a way to insure complete filling of the space.

(3) If an outer casing is installed, it shall be grouted by either the pumping or pressure method.

(4) All grout mixtures shall be prepared prior to emplacement.

(5) The well shall be grouted within five working days after the casing is set.

(6) No additives which will accelerate the process of hydration shall be used in grout for thermoplastic well casing.

(7) In those instances where the life expectancy of the well will not exceed 90 days, the Director may consider modifications or deletion of the grouting requirements where such modifications or deletion would not have a deleterious effect upon an underground source of drinking water.

(8) Packing materials shall:

- (A) be composed of quartz, granite, or similar rock material and shall be clean, of uniform size, water-washed and free from clay, silt, or other deleterious material;
- (B) be disinfected prior to subsurface emplacement;
- (C) be emplaced such that it shall not connect aquifers or zones which have differences in water quality that would result in the deterioration of the water qualities in any aquifer or zone; and
- (D) be evenly distributed around the screen and shall extend to a depth at least one foot above the top of the screen. A one foot thick seal, comprised of bentonitic clay or other material approved by the Director, shall be emplaced directly above and in contact with the packing material.

(f) (e) Operating.

(1) Pressure at the well head shall be limited to a maximum which will assure ensure that the

pressure in the injection zone does not initiate new fractures or propagate existing fractures in the injection zone, initiate fractures in the confining zone, or cause the migration of injected or formation fluids outside the injection zone or area.

(2) Injection between the outermost casing protecting underground sources of drinking water and the well bore is prohibited.

(3) ~~In order to prevent outside contaminants from entering the top of the casing, the well head completion shall be subject to the requirements as follows:~~

(A) ~~The top of the casing shall be cut off smooth and level, be free of dents and cracks, and shall terminate and be maintained at least 12 inches above land surface.~~

(C) (3) Provisions will be made by the permittee for the monitoring of operating processes at the well head.

(4) All injection wells shall be afforded reasonable protection against damage during construction and use.

(g) (f) Monitoring.

(1) Monitoring of Type 5A any injection well wells may be required by the ~~director~~ Director as necessary to demonstrate adequate protection of underground sources of drinking water. In determining the type, density, frequency, and scope of monitoring, the Director shall consider the following:

(A) physical and chemical characteristics of the injection zone;

(B) physical and chemical characteristics of the injected fluid(s);

(C) volume and rate of discharge of the injected fluid(s);

(D) compatibility of the injected fluid(s) with the formation fluid(s);

(E) the number, type and location of all wells, mines, surface bodies of water, and man-made structures ~~withing~~ within the area of review;

(F) proposed injection procedures;

(G) expected changes in pressure, formation fluid displacement, and direction of movement of injected fluid;

(H) proposals of corrective action to be taken in the event that a failure in any phase of injection operations endangers an underground source of drinking water; and

(I) the life expectancy of the injection operations.

(2) Monitoring of ~~all other type 5 wells shall be conducted by the well owner or operator, if required by the Director, shall be~~ in accordance with the following requirements:

(A) Samples and measurements, taken for the purpose of monitoring, shall be representative of the monitored activity.

(B) ~~The analysis Analysis of the physical and chemical characteristics of the injected fluid shall be made monthly or more frequently, as necessary, in order to provide demonstrate representative data on its characteristics for characterization of the injectant.~~

(C) Monitoring of injection pressure, flow rate, and cumulative volume shall occur ~~daily according to a schedule determined necessary by the Director.~~

(D) ~~A demonstration of mechanical integrity shall be conducted at least once every year during the life of the injection well.~~

(E) ~~(D) Monitor Monitoring wells associated with the injection site shall be monitored quarterly to detect any migration of injected fluids from the injection zone.~~

(F) ~~(E) The Director may require the The installation and use of continuous recording devices to monitor the injection pressure, flow, rate, and volume of injected fluid shall be conducted according to industry standards.~~

(g) Injection Well Identification Plate.

(1) An identification plate showing the name and registration number of the drilling contractor shall be permanently installed on the well within 24 hours after completion of the drilling.

(2) The identification plate shall be constructed of a durable weatherproof, rustproof metal or equivalent material.

(3) The identification plate shall be securely attached to the well casing, or other location approved by the Director, where it is readily visible.

(4) The identification plate shall not be removed from the well by any person.

(5) The identification tag shall be stamped with a permanent marking within 30 days of completion of the well to show the following:

(A) total depth of well;

(B) casing depth (ft.) and inside diameter (in.);

(C) screened intervals of screened wells;

(D) gravel interval of gravel-packed wells;

(E) yield, in gallons per minute (gpm), or specific capacity in gallons per minute per foot of drawdown (gpm ft.-dd);

(F) static water level and date measured;

(G) drilling contractor and registration number; and

(H) date well completed.

(h) Reporting. The well owner or operator shall be responsible for submitting to the Director on forms furnished by the Director, or ~~in~~ on an alternate approved form:

(1) A record of the construction or abandonment or ~~repairs of a well~~, to include: the owner's name; well location, size, and depth; casing record; method of completion or abandonment; forma-

tion log; static water level; injection apparatus; and records of any surveys, geophysical logs, tests, or water analyses, and changes in construction or in materials replaced. These records shall be submitted within 30 days of completion of injection activities or abandonment of the well, whichever occurs earliest.

(2) A record of any well repair to include: the owner's name; the well location, and the change in construction and materials replaced. This record shall be submitted within 30 days of repair.

(3) (2) Monthly Quarterly reports on required monitoring activities, which shall include:

- (A) the date, exact place, and time of sampling or measurements;
- (B) the individual(s) who performed the sampling or measurements;
- (C) the date(s) analyses are performed;
- (D) the individual(s) who performed the analyses;
- (E) the analytical techniques or methods used; and
- (F) the results of such sampling, measurements or analyses.

*Statutory Authority G.S. 87-87; 87-88; 87-94; 87-95; 143-211; 143-214.2(b); 143-215.1A; 143-215.3(a)(1); 143-215.3(c); 143-215.6(c).*

#### .0214 ABANDONMENT AND CHANGE-OF-STATUS OF WELLS

(a) In the event Any any injection and/or associated monitor monitoring well which has been is abandoned, either temporarily or permanently, the well owner shall notify the Director within 15 days and the well(s) shall be abandoned in accordance with one of the following procedures or other alternatives as specified by the Director:

- (1) Procedures for temporarily abandoned wells.
  - (A) Upon temporary removal from service, or prior to being put into service, the well shall be sealed with a water-tight cap or seal compatible with the casing and installed so that it cannot be removed easily by hand.
  - (B) The well shall be maintained whereby it is not a source or channel of contamination to an underground source of drinking water during its temporary status.
  - (C) The well shall be repaired or permanently abandoned, as specified by the Director, within 30 days of receipt of notice from the department, upon finding that a well is acting as a source or channel of contamination to an underground source of drinking water.
- (2) Procedures for permanently abandoned wells.
  - (A) All casing and materials may be removed prior to initiation of abandonment procedures if the Director finds such removal will not be responsible for, or contribute to, the contamina-

tion of an underground source of drinking water. Any casing not grouted in accordance with 15A NCAC 2C .0113 shall be removed or properly grouted.

- (B) The entire depth of the well shall be sounded before it is sealed to insure freedom from obstructions that may interfere with sealing operations.
- (C) The well shall be thoroughly chlorinated disinfected, prior to sealing, if the Director determines that failure to do so could lead to the contamination of an underground source of drinking water.
- (D) The Drilled well wells shall be completely filled with cement grout, which shall be introduced into the well through a pipe which extends to the bottom of the well and is raised as the well is filled. "Bored" or hand-dug wells over 24 inches in diameter may be filled with an alternative material upon approval by the Director.
- (E) In the case of gravel-packed wells in which the casing and screens have not been removed, the casing shall be perforated opposite the gravel pack, at intervals not exceeding 10 feet, and grout injected through the perforations neat-cement shall be injected into the well completely filling it from the bottom of the casing to the top.
- (F) In those cases when, as a result of the injection operations, a subsurface cavity has been created, the well shall be abandoned in such a manner that will prevent the movement of fluids into or between underground sources of drinking water and in accordance with the terms and conditions of the permit.

(b) Exploratory and/or test wells, constructed for the purposes of obtaining information regarding an injection well site, shall be permanently abandoned in accordance with Subparagraph (a)(2) of this Rule upon completion of their exploratory or testing status.

(c) An injection well shall be permanently abandoned by the drilling contractor before removing his equipment from the site if, for any reason prior to injection, the well casing has not been installed or has been removed from the well bore.

*Statutory Authority G.S. 87-87; 87-88; 143-211; 143-215.1A; 143-215.3(a)(1); 143-215.3(c).*

#### .0215 VARIANCE

(a) The Director may grant a variance from any construction or operation standards under the rules of this Section. Any variance will be in writing, and may be granted upon written application to the Director, by the person responsible for the construction of the well for which the variance is sought, if the Director finds facts to support the following

conclusions:

- (1) that the use of the well will not endanger human health and welfare or the groundwater;
- (2) that construction or operation in accordance with the standards was not technically feasible or desirable.

(b) The Director may require the variance applicant to submit such information as he deems necessary to make a decision to grant or deny the variance. The Director may impose such conditions on a variance or the use of a well for which a variance is granted as he deems necessary to protect human health and welfare and the groundwater resources. The findings of fact supporting any variance under this Rule shall be in writing and made part of the variance.

(c) A variance applicant who is dissatisfied with the decision of the Director may commence a contested case by filing a petition under G.S. 150B-23 within 60 days after receipt of the decision.

Statutory Authority G.S. 87-87(4); 87-88; 143-215.1A; 143-215.3(a)(4); 150B-23.

#### .0216 DELEGATION

- (a) The Director is delegated the authority to grant permission for well construction under G.S. 87-87.
- (b) The Director is delegated the authority to give notices and sign orders for violations under G.S. 87-91.

Statutory Authority G.S. 87-87(4); 143-215.1A; 143-215.3(a)(1); 143-215.3(a)(4).

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**N**otice is hereby given in accordance with G.S. 150B-21.2 that the DEHNR - Environmental Management Commission intends to amend rules cited as 15A NCAC 2D .0101, .0501, .0516, .0518 - .0519, .0521, .0524, .0533, .0535, .0537, .0601, .0604, .0608, .0902, .1109, .1202, .1204 - .1206; 2H .0610; 2Q .0102 - .0103, .0109, .0201 - .0204, .0207, .0302, .0311, .0501 - .0503, .0507 - .0508; repeal rules cited as 15A NCAC 2D .0520, .0525, .0929; and adopt rules cited as 15A NCAC 2D .0539, .1110 - .1111, .1901 - .1906; 2Q .0526.

Proposed Effective Date: May 1, 1996.

A Public Hearing will be conducted at 7:00 pm on December 19, 1995 at the Archdale Building, Groundfloor Hearing Room, 512 North Salisbury Street, Raleigh, NC.

#### Reason for Proposed Action:

15A NCAC 2D .0101; 2Q .0103, .0109, .0201 - .0204, .0207, .0501, .0503, .0507 - To clarify and correct permit processing and permit fee rules.

15A NCAC 2D .0519, .0929; 2Q .0311 - To clarify emission standards for control of nitrogen dioxide and nitrogen

oxides, to repeal the petroleum refinery source rule, and to remove a requirement for the permitting of facilities at multiple temporary sites.

15A NCAC 2D .0539 - To adopt a rule for the control of odorous emissions from feed ingredient manufacturing plans.

15A NCAC 2D .1204 - Remove requirement for continuous temperature measurement for pet crematories.

15A NCAC 2D .0501, .0516, .0518, .0521, .0524 - .0525, .0533, .0535, .0537, .0601, .0604, .0608, .0902, .1110 - .1111, .1202, .1205 - .1206; 2H .0610; 2Q .0302, .0502, .0508 - To adopt New Source Performance Standards and Maximum Achievable Control standards by reference as they are federally promulgated unless the Director notices a substitute or excluded standard in the North Carolina Register and to recodify the National Emission Standards for Hazardous Air Pollutants into a new Section and correct associated cross-reference.

15A NCAC 2Q .0102 - To add and clarify permit exemptions.

15A NCAC 2D .0520, .1901 - .1905 - To clarify the requirements and provisions for permissible and non-permissible open burning.

15A NCAC 2D .1109; 2Q .0526 - To add and clarify Case-by-Case MACT procedures.

**Comment Procedures:** All persons interested in these matters are invited to attend the public hearings. Any person desiring to comment for more than three minutes is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. The hearing record will remain open until January 19, 1996, to receive additional written statements. Comments should be sent to and addition:

Mr. Thomas C. Allen  
Division of Environmental Management  
PO Box 29580  
Raleigh, North Carolina 27626-0580  
(919) 733-1489 (phone)  
(919) 733-1812 (fax)

**Fiscal Note:** Rules 15A NCAC 2D .0520, .1901 - .1906 affect the expenditures and distribution of local government funds.

Rule 15A NCAC 2Q .0103 affects the expenditure or distribution of State funds subject to the Executive Budget Act, Article 1 of Chapter 143 and local government funds. The remainder of the rules do not affect the expenditures or revenues of state or local government funds.

#### SUBCHAPTER 2D - AIR POLLUTION CONTROL REQUIREMENTS

#### SECTION .0100 - DEFINITIONS AND REFERENCES

##### .0101 DEFINITIONS

The definition of any word or phrase used in Rules of this Subchapter is the same as given in Article 21, Chapter 143 of the General Statutes of North Carolina, as amended. The following words and phrases, which are not defined in the article, have the following meaning:

- (1) "Act" means "The North Carolina Water and Air Resources Act."
- (2) "Air pollutant" means an air pollution agent or combination of such agents, including any physical, chemical, biological, radiative substance or matter which is emitted into or otherwise enters the ambient air.
- (3) "Ambient air" means that portion of the atmosphere outside of buildings and other enclosed structures, stacks or ducts, and which surrounds human, animal or plant life, or property.
- (4) "Approved" means approved by the Director of the Division of Environmental Management.
- (5) "Capture system" means the equipment (including hoods, ducts, fans, etc.) used to contain, capture, or transport a pollutant to a control device.
- (6) "CFR" means "Code of Federal Regulations."
- (7) "Combustible material" means any substance which, when ignited, will burn in air.
- (8) "Construction" means change in method of operation or any physical change, including on-site fabrication, erection, installation, replacement, demolition, or modification of a source, that results in a change in emissions or affects the compliance status.
- (9) "Control device" means equipment (fume incinerator, adsorber, absorber, scrubber, filtermedia, cyclone, electrostatic precipitator, or the like) used to destroy or remove air pollutant(s) prior to discharge to the ambient air.
- (10) "Day" means a 24-hour period beginning at midnight.
- (11) "Director" means the Director of the Division of Environmental Management unless otherwise specified.
- (12) "Dustfall" means particulate matter which settles out of the air and is expressed in units of grams per square meter per 30-day period.
- (13) "Emission" means the release or discharge, whether directly or indirectly, of any air pollutant into the ambient air from any source.
- (14) "Facility" means all of the pollutant emitting activities activities, except transportation facilities as defined under Rule .0802 of this Subchapter, that are located on one or more adjacent properties under common control.
- (15) "FR" means Federal Register.
- (16) "Fugitive emission" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.
- (17) "Fuel burning equipment" means equipment whose primary purpose is the production of energy or power from the combustion of any fuel. The equipment is generally used for, but not limited to, heating water, generating or circulating steam, heating air as in warm air furnace, or furnishing process heat by transferring energy by fluids or through process vessel walls.
- (18) "Garbage" means any animal and vegetable waste resulting from the handling, preparation, cooking and serving of food.
- (19) "Incinerator" means a device designed to burn solid, liquid, or gaseous waste material.
- (20) "Opacity" means that property of a substance tending to obscure vision and is measured in terms of percent obscuration.
- (21) "Open burning" means any fire whose products of combustion are emitted directly into the outdoor atmosphere without passing through a stack or chimney, approved incinerator, or other similar device.
- (22) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a facility, source, or air pollution control equipment.
- (23) "Particulate matter" means any material except uncombined water that exists in a finely divided form as a liquid or solid at standard conditions.
- (24) "Particulate matter emissions" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by methods specified in this Subchapter.
- (25) "Permitted" means any source subject to a permit under this Subchapter or Subchapter 15A NCAC 2Q.
- (26) "Person" means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, or any other legal entity, or its legal representative, agent or assigns.
- (27) "PM10" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by methods specified in this Subchapter.
- (28) "PM10 emissions" means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by methods specified in this Subchapter.
- (29) "Refuse" means any garbage, rubbish, or trade waste.
- (30) "Rubbish" means solid or liquid wastes from residences, commercial establishments, or institutions.
- (31) "Rural area" means an area which is primarily devoted to, but not necessarily limited to, the following uses: agriculture, recreation, wildlife management, state park, or any area of natural cover.

(32) "Salvage operation" means any business, trade, or industry engaged in whole or in part in salvaging or reclaiming any product or material, including, but not limited to, metal, chemicals, motor vehicles, shipping containers, or drums.

(33) "Smoke" means small gas-borne particles resulting from incomplete combustion, consisting predominantly of carbon, ash, and other burned or unburned residue of combustible materials that form a visible plume.

(34) "Source" means any stationary article, machine, process equipment, or other contrivance, or combination thereof, or any tank-truck, trailer or railroad tank car from which air pollutants emanate or are emitted, either directly or indirectly.

(35) "Sulfur oxides" means sulfur dioxide, sulfur trioxide, their acids and the salts of their acids. The concentration of sulfur dioxide is measured by the methods specified in this Subchapter.

(36) "Total suspended particulate" means any finely divided solid or liquid material, except water in uncombined form, that is or has been airborne as measured by methods specified in this Subchapter.

(37) "Trade wastes" means all solid, liquid, or gaseous waste materials or rubbish resulting from combustion, salvage operations, building operations, or the operation of any business, trade, or industry including, but not limited to, plastic products, paper, wood, glass, metal, paint, grease, oil and other petroleum products, chemicals, and ashes.

(38) "ug" means micrograms.

Statutory Authority G.S. 143-215.3(a)(1); 143-213.

## SECTION .0500 - EMISSION CONTROL STANDARDS

### .0501 COMPLIANCE WITH EMISSION CONTROL STANDARDS

(a) Purpose and Scope. The purpose of this Rule is to assure orderly compliance with emission control standards found in this Section. This Rule shall apply to all air pollution sources, both combustion and non-combustion.

(b) In determining compliance with emission control standards, means shall be provided by the owner to allow periodic sampling and measuring of emission rates, including necessary ports, scaffolding and power to operate sampling equipment; and upon the request of the Division of Environmental Management, data on rates of emissions shall be supplied by the owner.

(c) Testing to determine compliance shall be in accordance with the following procedures, except as may be otherwise required in Rules .0524, ~~.0525~~, and .0604, .0604, .1110, or .1111 of this Subchapter.

(1) Method 1 of Appendix A of 40 CFR Part 60 shall be used to select a suitable site and the appropriate number of test points for the follow-

ing situations:

(A) particulate testing,

(B) velocity and volume flow rate measurements,

(C) testing for acid mist or other pollutants which occur in liquid droplet form,

(D) any sampling for which velocity and volume flow rate measurements are necessary for computing final test results, and

(E) any sampling which involves a sampling method which specifies isokinetic sampling. (Isokinetic sampling is sampling in which the velocity of the gas at the point of entry into the sampling nozzle is equal to the velocity adjacent to the nozzle.)

Method 1 shall be applied as written with the following clarifications: Testing installations with multiple breechings can be accomplished by testing the discharge stack(s) to which the multiple breechings exhaust. If the multiple breechings are individually tested, then

Method 1 shall be applied to each breeching individually. If test ports in a duct are located less than two diameters downstream from any disturbance (fan, elbow, change in diameter, or any other physical feature that may disturb the gas flow) or one-half diameter upstream from any disturbance, the acceptability of the test location shall be subject to the approval of the Director, or his designee.

Method 2 of Appendix A of 40 CFR Part 60 shall be applied as written and used concurrently with any test method in which velocity and volume flow rate measurements are required.

(3) Sampling procedures for determining compliance with particulate emission control standards shall be in accordance with Method 5 of Appendix A of 40 CFR Part 60. Method 17 of Appendix A of 40 CFR Part 60 may be used instead of Method 5 provided that the stack gas temperature does not exceed 320° F. The minimum time per test point for particulate testing shall be two minutes and the minimum time per test run shall be one hour. The sample gas drawn during each test run shall be at least 30 cubic feet. A number of sources are known to emit organic material (oil, pitch, plasticizers, etc.) which exist as finely divided liquid droplets at ambient conditions. These materials cannot be satisfactorily collected by means of the above Method 5. In these cases the Commission may require the use of Method 5 as proposed on August 17, 1971, in the Federal Register, Volume 36, Number 159.

(4) The procedures for determining compliance with sulfur dioxide emission control standards for fuel burning sources may be either by determining sulfur content with fuel analysis or by stack

sampling. Combustion sources choosing to demonstrate compliance through stack sampling shall follow procedures described in Method 6 of Appendix A of 40 CFR Part 60. When Method 6 of Appendix A of 40 CFR Part 60 is used to determine compliance, compliance shall be determined by averaging six 20-minute samples taken over such a period of time that no more than 20 minutes elapses between any two consecutive samples. If a source chooses to demonstrate compliance by analysis of sulfur in fuel, sampling, preparation, and analysis of fuels shall be in accordance with the following American Society of Testing and Materials (ASTM) methods:

- (A) coal:
  - (i) sampling--ASTM Method D 2234;
  - (ii) preparation--ASTM Method D 2013;
  - (iii) gross calorific value (BTU)--ASTM Method D 2015;
  - (iv) moisture content--ASTM Method D 3173 or D 5412;
  - (v) sulfur content--ASTM Method D 3177 or ASTM Method D 4239;
- (B) oil:
  - (i) sampling--A sample shall be collected at the pipeline inlet to the fuel burning unit after sufficient fuel has been drained from the line to remove all fuel that may have been standing in the line;
  - (ii) heat of combustion (BTU)--ASTM Method D 240 or D 2015;
  - (iii) sulfur content--ASTM Method D 129 or D 1552.

The sulfur content and BTU content of the fuel shall be reported on a dry basis. When the test methods described in Parts (A) or (B) of this Subparagraph are used to demonstrate that the ambient air quality standards for sulfur dioxide are being protected, the sulfur content shall be determined at least once per year from a composite of at least three or 24 samples taken at equal time intervals from the fuel being burned over a three-hour or 24-hour period, respectively, whichever is the time period for which the ambient standard is most likely to be exceeded; this requirement shall not apply to sources that are only using fuel analysis in place of continuous monitoring to meet the requirements of Section .0600 of this Subchapter.

- (5) Sulfuric acid manufacturing plants and spodumene ore roasting plants shall demonstrate compliance with Rules .0517 and .0527, respectively, of this Section by using Method 8 of Appendix A of 40 CFR Part 60. Compliance shall be determined by averaging emissions measured by three one-hour tests.

- (6) All industrial processes not covered under Subparagraph (5) of this Paragraph emitting sulfur dioxide shall demonstrate compliance by sampling procedures described in Method 6 of Appendix A of 40 CFR Part 60. Compliance shall be determined by averaging six 20-minute samples taken over such a period of time that no more than 20 minutes elapses between any two consecutive samples.
- (7) Sampling procedures to demonstrate compliance with emission standards for nitrogen oxides shall be in accordance with the procedures set forth in Method 7 of Appendix A of 40 CFR Part 60.
- (8) Method 9 of Appendix A of 40 CFR 60 shall be used when opacity is determined by visual observation.
- (9) Notwithstanding the stated applicability to new source performance standards or primary aluminum plants, the procedures to be used to determine fluoride emissions are:
  - (A) for sampling emissions from stacks, Method 13A or 13B of Appendix A of 40 CFR Part 60,
  - (B) for sampling emissions from roof monitors not employing stacks or pollutant collection systems, Method 14 of Appendix A of 40 CFR Part 60, and
  - (C) for sampling emissions from roof monitors not employing stacks but equipped with pollutant collection systems, the procedure under 40 CFR 60.8(b), except that the Director of the Division of Environmental Management shall be substituted for the administrator.
- (10) Emissions of total reduced sulfur shall be measured by the test procedure described in Method 16 of Appendix A of 40 CFR Part 60 or Method 16A of Appendix A of 40 CFR Part 60.
- (11) Emissions of mercury shall be measured by the test procedure described in Method 101 or 102 of Appendix B of 40 CFR Part 61.
- (12) Each test (excluding fuel samples) shall consist of three repetitions or runs of the applicable test method. For the purpose of determining compliance with an applicable emission standard the average of results of all repetitions shall apply. In the event that a sample is accidentally lost or conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances, beyond the owner or operator's control, and there is no way to obtain another sample, then compliance may be determined using the arithmetic average of the results of the two other runs.
- (13) In conjunction with performing certain test methods prescribed in this Rule, the determina-

tion of the fraction of carbon dioxide, oxygen, carbon monoxide and nitrogen in the gas being sampled is necessary to determine the molecular weight of the gas being sampled. Collecting a sample for this purpose shall be done in accordance with Method 3 of Appendix A of 40 CFR Part 60:

(A) The grab sample technique may also be used with instruments such as Bacharach Fyrite (trade name) with the following restrictions:

- (i) Instruments such as the Bacharach Fyrite (trade name) may only be used for the measurement of carbon dioxide.
- (ii) Repeated samples shall be taken during the emission test run to account for variations in the carbon dioxide concentration. No less than four samples shall be taken during a one-hour test run, but as many as necessary shall be taken to produce a reliable average.
- (iii) The total concentration of gases other than carbon dioxide, oxygen and nitrogen shall be less than one percent.

(B) For fuel burning sources, concentrations of oxygen and nitrogen may be calculated from combustion relations for various fuels.

(14) For those processes for which the allowable emission rate is determined by the production rate, provisions shall be made for controlling and measuring the production rate. The source shall be responsible for ensuring, within the limits of practicality, that the equipment or process being tested is operated at or near its maximum normal production rate or at a lesser rate if specified by the Director or his delegate. The individual conducting the emission test shall be responsible for including with his test results, data which accurately represent the production rate during the test.

(15) Emission rates for wood or fuel burning sources which are expressed in units of pounds per million BTU shall be determined by the "Oxygen Based F Factor Procedure" described in 40 CFR Part 60, Appendix A, Method 19, Section 5. Other procedures described in Method 19 may be used if appropriate. To provide data of sufficient accuracy to use with the F-factor methods, an integrated (bag) sample shall be taken for the duration of each test run. In the case of simultaneous testing of multiple ducts, there shall be a separate bag for each sampling train. The bag sample shall be analyzed with an Orsat analyzer in accordance with Method 3 of Appendix A of 40 CFR Part 60. (The number of analyses and the tolerance between analyses are specified in Method 3.) The specifications indicated in Method 3 for the construction and

(16) operation of the bag sampling apparatus shall be followed.

(17) Particulate testing on steam generators that utilize soot blowing as a routine means for cleaning heat transfer surfaces shall be conducted so that the contribution of the soot blowing is represented as follows:

(A) If the soot blowing periods are expected to represent less than 50 percent of the total particulate emissions, one of the test runs shall include a soot blowing cycle.

(B) If the soot blowing periods are expected to represent more than 50 percent of the total particulate emissions then two of the test runs shall each include a soot blowing cycle.

Under no circumstances shall all three test runs include soot blowing. The average emission rate of particulate matter is calculated by the equation:

$$E_{AVG} = E_s \frac{S(A + B)}{AR} + E_n \left( \frac{R - S}{R} \right) \frac{BS}{AR}$$

$E_{AVG}$  equals the average emission rate in pounds per million Btu for daily operating time.  $E_s$  equals the average emission rate in pounds per million Btu of sample(s) containing soot blowing.  $E_n$  equals the average emission rate in pounds per million Btu of sample(s) with no soot blowing.  $A$  equals hours of soot blowing during sample(s).  $B$  equals hours without soot blowing during sample(s) containing soot blowing.  $R$  equals average hours of operation per 24 hours.  $S$  equals average hours of soot blowing per 24 hours. If large changes in boiler load or stack flow rate occur during soot blowing, other methods of prorating the emission rate may be considered more appropriate; for these tests the Director or his designee may approve an alternate method of prorating.

(18) Emissions of volatile organic compounds shall be measured by the appropriate test procedure in Section .0900 of this Subchapter.

Upon prior approval by the Director or his delegate, test procedures different from those described in this Rule may be used if they will provide equivalent or more reliable results. Furthermore, the Director or his delegate may prescribe alternate test procedures on an individual basis when he considers that the action is necessary to secure reliable test data. In the case of sources for which no test method is named, the Director or his delegate may prescribe or approve methods on an individual basis.

(d) All new sources shall be in compliance prior to beginning operations.

(e) In addition to any control or manner of operation

necessary to meet emission standards in this Section, any source of air pollution shall be operated with such control or in such manner that the source shall not cause the ambient air quality standards of Section .0400 of this Subchapter to be exceeded at any point beyond the premises on which the source is located. When controls more stringent than named in the applicable emission standards in this Section are required to prevent violation of the ambient air quality standards or are required to create an offset, the permit shall contain a condition requiring these controls.

(f) The Bubble Concept. A facility with multiple emission sources or multiple facilities within the same area may choose to meet the total emission limitation for a given pollutant through a different mix of controls than that required by the rules in this Section or Section .0900 of this Subchapter.

- (1) In order for this mix of alternative controls to be permitted the Director shall determine that the following conditions are met:
  - (A) Sources to which Rules .0524, ~~.0525~~, .0530, and ~~.0531~~ of this Section, .0531, .0110 or .1111 of this Subchapter, the federal New Source Performance Standards (NSPS), the federal National Emission Standards for Hazardous Air Pollutants (NESHAPS), regulations established pursuant to Section 111 (d) of the federal Clean Air Act, or state or federal Prevention of Significant Deterioration (PSD) requirements apply, will have emissions no larger than if there were not an alternative mix of controls;
  - (B) The facility (or facilities) is located in an attainment area or an unclassified area or in an area that has been demonstrated to be attainment by the statutory deadlines (with reasonable further progress toward attainment) for those pollutants being considered;
  - (C) All of the emission sources affected by the alternative mix are in compliance with applicable regulations or are in compliance with established compliance agreements; and
  - (D) The review of an application for the proposed mix of alternative controls and the enforcement of any resulting permit will not require expenditures on the part of the State in excess of five times that which would otherwise be required.
- (2) The owner(s) or operator(s) of the facility (facilities) shall demonstrate to the satisfaction of the Director that the alternative mix of controls is equivalent in total allowed emissions, reliability, enforceability, and environmental impact to the aggregate of the otherwise applicable individual emission standards; and
  - (A) that the alternative mix approach does not interfere with attainment and maintenance of ambient air quality standards and does not

interfere with the PSD program; this demonstration shall include modeled calculations of the amount, if any, of PSD increment consumed or created;

- (B) that the alternative mix approach conforms with reasonable further progress requirements in any nonattainment area;
- (C) that the emissions under the alternative mix approach are in fact quantifiable, and trades among them are even;
- (D) that the pollutants controlled under the alternative mix approach are of the same criteria pollutant categories, except that emissions of some criteria pollutants used in alternative emission control strategies are subject to the limitations as defined in 44 FR 71784 (December 11, 1979), Subdivision D.1.c.ii. The Federal Register referenced in this Part is hereby incorporated by reference and does not include subsequent amendments or editions.

The demonstrations of equivalence shall be performed with at least the same level of detail as The North Carolina State Implementation plan for Air Quality demonstration of attainment for the area in question. Moreover, if the facility involves another facility in the alternative strategy, it shall complete a modeling demonstration to ensure that air quality is protected. Demonstrations of equivalency shall also take into account differences in the level of reliability of the control measures or other uncertainties.

- (3) The emission rate limitations or control techniques of each source within the facility (facilities) subjected to the alternative mix of controls shall be specified in the facility's (facilities') permits(s).
- (4) Compliance schedules and enforcement actions shall not be affected because an application for an alternative mix of controls is being prepared or is being reviewed.
- (5) The Director may waive or reduce requirements in this Paragraph up to the extent allowed by the Emissions Trading Policy Statement published in the Federal Register of April 7, 1982, pages 15076-15086, provided that the analysis required by Paragraph (g) of this Rule shall support any waiver or reduction of requirements. The Federal Register referenced in this Paragraph is hereby incorporated by reference and does not include subsequent amendments or editions.

- (g) In a permit application for an alternative mix of controls under Paragraph (f) of this Rule, the owner or operator of the facility shall demonstrate to the satisfaction of the Director that the proposal is equivalent to the existing requirements of the SIP in total allowed emissions, enforceability, reliability, and environmental impact. The Director shall provide for public notice with an opportunity for a

request for public hearing following the procedures under 15A NCAC 2Q .0300 or .0500, as applicable. If and when a permit containing these conditions is issued, it will become a part of the state implementation plan (SIP) as an appendix available for inspection at the department's regional offices. Until the U.S. Environmental Protection Agency (EPA) approves the SIP revision embodying the permit containing an alternative mix of controls, the facility shall continue to meet the otherwise applicable existing SIP requirements. The revision will be approved by EPA on the basis of the revision's consistency with EPA's "Policy for Alternative Emission Reduction Options Within State Implementation Plans" as promulgated in the Federal Register of December 11, 1989, pages 71780-71788, and subsequent rulings.

(h) The referenced ASTM test methods in this Rule are hereby incorporated by reference and include subsequent amendments and editions. Copies of referenced ASTM test methods or Federal Registers may be obtained from the Division of Environmental Management, P.O. Box 29535, Raleigh, North Carolina 27626-0535 at a cost of ten cents (\$0.10) per page.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

#### .0516 SULFUR DIOXIDE EMISSIONS FROM COMBUSTION SOURCES

(a) Emission of sulfur dioxide from any source of combustion that is discharged from any vent, stack, or chimney shall not exceed 2.3 pounds of sulfur dioxide per million BTU input. Sulfur dioxide formed by the combustion of sulfur in fuels, wastes, ores, and other substances shall be included when determining compliance with this standard. Sulfur dioxide formed or reduced as a result of treating flue gases with sulfur trioxide or other materials shall also be accounted for when determining compliance with this standard.

(b) A source subject to an emission standard for sulfur dioxide in Rule .0524, ~~.0525, or .0527 of this Section~~ ~~.0527, .1110, or .1111 of this Subchapter~~ shall meet that standard.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

#### .0518 MISCELLANEOUS VOLATILE ORGANIC COMPOUND EMISSIONS

(a) This Rule shall be applicable to all sources of volatile organic compound emissions for which no other volatile organic compound emission control standards are applicable, including those standards found in Section .0900 of this Subchapter as well as Rules ~~.0524 and .0525 of this Section~~ ~~.0524, .1110, or .1111 of this Subchapter, or 40 CFR Part 63.~~

(b) A person shall not place, store or hold in any stationary tank, reservoir, or other container with a capacity greater than 50,000 gallons, any liquid compound containing

carbon and hydrogen or containing carbon and hydrogen in combination with any other element which has a vapor pressure of 1.5 pounds per square inch absolute or greater under actual storage conditions unless such tank, reservoir, or other container:

- (1) is a pressure tank, capable of maintaining working pressures sufficient at all times to prevent vapor gas loss into the atmosphere; or
- (2) is designed and equipped with one of the following vapor loss control devices:
  - (A) a floating pontoon, double deck type floating roof or internal pan type floating roof equipped with closure seals to enclose any space between the cover's edge and compartment wall; this control equipment shall not be permitted if the compound is a photochemically reactive material having a vapor pressure of 11.0 pounds per square inch absolute or greater under actual storage conditions; all tank gauging or sampling devices shall be gas-tight except when tank gauging or sampling is taking place;
  - (B) a vapor recovery system or other equipment or means of air pollution control as approved by the Director which reduces the emission of organic materials into the atmosphere by at least 90 percent by weight; all tank gauging or sampling devices shall be gas-tight except when tank gauging or sampling is taking place.

(c) A person shall not load in any one day more than 20,000 gallons of any volatile organic compound into any tank-truck, trailer, or railroad tank car from any loading facility unless the loading uses submerged loading through boom loaders that extend down into the compartment being loaded or by other methods demonstrated to the Director to be at least as efficient.

(d) With the exemptions of Paragraphs (g) and (h) of this Rule, a A person shall not discharge from all sources at any one plant site more than a total of 40 pounds of photochemically reactive solvent into the atmosphere in any one day, from any article, machine, equipment or other contrivance used for employing, applying, evaporating or drying any photochemically reactive solvent or substance containing such solvent unless the discharge has been reduced by at least 85 percent by weight. Photochemically reactive solvents include any solvent with an aggregate of more than 20 percent of its total volume composed of the chemical compounds classified in this Paragraph, or which exceed any of the following percentage composition limitations, referred to the total volume of the solvent:

- (1) a combination of hydrocarbons, alcohols, aldehydes, esters, ethers, or ketones having an olefinic or cyclo-olefinic type of unsaturation--five percent;
- (2) a combination of aromatic hydrocarbons with eight or more carbon atoms to the molecule except ethylbenzene--eight percent;

(3) a combination of ethylbenzene, ketones having branched hydrocarbon structure, trichloroethylene, or toluene--20 percent.

Whenever any photochemically reactive solvent, or any constituent of any photochemically reactive solvent may be classified from its chemical structure into more than one of the groups of chemical compounds in this Paragraph, it shall be considered as a member of the most reactive chemical compound group, that is, that group having the least allowable percent of the total volume of solvents. Diacetone alcohol and perchloroethylene are not considered photochemically reactive under this Rule. Compounds that are not volatile organic compounds as defined under 40 CFR 51.100 are also not considered photochemically reactive under this Rule.

(e) A source need not comply with Paragraphs (b), (c), or (d) of this Rule if it complies with otherwise applicable rules in Section .0900 of this Subchapter. However, the source shall not comply with Rules .0902 through .0911, .0950, .0951(a), and .0952 of this Subchapter. This Paragraph shall not apply to sources located in an area identified in Rule .0902(a) of this Subchapter subject to the requirements of Section .0900 of this Subchapter because of Rule .0902(d), (e), or (f) of this Subchapter.

(f) Any source to which this Rule applies shall be exempted from the requirements of Paragraphs (b), (c), or (d) if control equipment is installed and operated which meets the requirements of best available control technology as defined in and determined by procedures of Rule .0530 of this Section. A new best available control technology determination and procedure need not be performed if in the judgement of the Director a previous best available control technology determination is applicable.

(g) Sources at a plant site with emission limits established by Paragraphs (e) or (f) of this Rule, Rule .0524, .1110 or .1111 of this Subchapter, or 40 CFR Part 63 shall be excluded from consideration when determining the compliance of any remaining sources with Paragraph (d) of this Rule.

(h) Recycled solvents shall be considered non-photochemically reactive if:

- (1) The solvents are recycled on-site;
- (2) The solvents were originally non-photochemically reactive; and
- (3) All make-up solvents added to the recycled solvents are non-photchemically reactive.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

#### .0519 CONTROL OF NITROGEN DIOXIDE AND NITROGEN OXIDES EMISSIONS

(a) The emissions of nitrogen dioxide shall not exceed:

- (1) 0.6 pounds per million BTU of heat input from any oil or gas fired boiler with a capacity of 250 million BTU per hour or more;
- (2) 1.3 pounds per million BTU of heat input from

~~any coal-fired boiler with a capacity of 250 million BTU per hour or more;~~

- (1) (3) 5.8 pounds per ton of acid produced from any nitric acid manufacturing plants;
- (2) (4) 5.8 pounds per ton of acid produced from any sulfuric acid manufacturing plant.

(b) The emissions of nitrogen oxides shall not exceed:

- (1) 0.8 pounds per million BTU of heat input from any oil or gas-fired boiler with a capacity of 250 million BTU per hour or more;
- (2) 1.8 pounds per million BTU of heat input from any coal-fired boiler with a capacity of 250 million BTU per hour or more.

(c) The emission limit for a boiler that burns both coal and oil or gas in combination shall be calculated by the equation  $E = [(Ec)(Qc) + (Eo)(Qo)] / Qt$ .

- (1)  $E$  = the emission limit for combination in lb/million BTU.
- (2)  $Ec$  = emission limit for coal only as determined by Paragraph (a) or (b) of this Rule in lb/million BTU.
- (3)  $Eo$  = emission limit for oil or gas as determined by Paragraph (a) or (b) of this Rule in lb/million BTU.
- (4)  $Qc$  = the actual coal heat input to the combination in BTU/hr.
- (5)  $Qo$  = the actual oil and gas heat input to the combination in BTU/hr.
- (6)  $Qt = Qc + Qo$  and is the actual total heat input to the combination in BTU/hr.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

#### .0520 CONTROL AND PROHIBITION OF OPEN BURNING

(a) ~~Purpose. This Regulation is for the purpose of preventing, abating, and controlling air pollution resulting from air contaminants released in the open burning of refuse or other combustible materials.~~

(b) ~~Scope. This Regulation applies to all operations involving open burning except those specifically exempted by Paragraph (d) of this Regulation.~~

(c) ~~A person shall not cause, allow, or permit open burning of refuse or other combustible material except those covered by a permit issued under the authority of the Commission under Section 143-215.108 of the act or the regulations of a duly certified local air pollution control program having jurisdiction.~~

(d) ~~Permissible Open Burning. While recognizing that open burning contributes to air pollution, the Commission is aware that certain types of open burning may reasonably be allowed in the public interest. Therefore, the following types of open burning are permissible as specified if burning is not prohibited by ordinances and regulations of governmental entities having jurisdiction. The authority to conduct open burning under the provisions of this Regulation does~~

not exempt or excuse any person from the consequences, damages or injuries which may result from this conduct. It does not excuse or exempt any person from complying with all applicable laws, ordinances, regulations and orders of the governmental entities having jurisdiction even though the open burning is conducted in compliance with this Regulation. Permission granted under the authority of the Commission under this Regulation shall be subject to continuing review and may be withdrawn at any time. Permissible open burning is:

- (1) fires purposely set for the instruction and training of fire fighting personnel when conducted under the supervision of:
  - (A) the North Carolina Insurance Department,
  - (B) North Carolina technical institutes, or
  - (C) the North Carolina community colleges, including:
    - (i) the North Carolina Fire College, and
    - (ii) the North Carolina Rescue College, which are conducted with the cooperation of one or both of these agencies;
- (2) fires purposely set for the instruction and training of fire fighting personnel at permanent fire fighting training facilities when conducted by a fire department, but these fires will not be permitted if the primary purpose in setting the fire is refuse disposal or recovery of salvageable materials. Factors which may be considered in determination of primary purpose include type, amount, and nature of combustible substances;
- (3) fires purposely set for the instruction and training of industrial fire fighting personnel in training programs which are repetitious and continuous in nature. A plan containing program aspects related to possible air pollution including, but not limited to:
  - (A) nature and location of the exercise,
  - (B) nature of material to be burned,
  - (C) amount of each type of material to be burned,
  - (D) training objectives of the exercise, and
  - (E) insofar as it is known, a schedule of dates and times of the exercises, has been submitted to and has been approved by the Director. These fires, however, will not be permitted if the primary purpose in setting the fire is refuse disposal or recovery of salvageable materials. Factors which may be considered in determination of primary purpose include type, amount and nature of combustible substances. Any deviations from the dates and times of exercises, including additions, postponements, and deletions, submitted in the schedule in the approved plan will be communicated verbally to the appropriate departmental field office at least one hour before the change;
- (4) fires purposely set for the instruction and training of public and industrial fire fighting person-

nel not covered under Subparagraphs (1), (2), or (3) of this Paragraph, if the training program aspects related to possible air pollution effects are approved in advance by the Air Quality Section and if these fire fighting exercise conditions are met:

- (A) The appropriate departmental field office shall be initially notified orally or in writing at least 48 hours in advance of any burning conducted in conjunction with a fire training exercise. If initial notice is given orally, a written notification shall also be submitted within 24 hours after the initial oral notification. The notification, either written or oral, shall include:
  - (i) nature and location of the exercise,
  - (ii) date and time that the exercise is to be held,
  - (iii) nature of materials to be burned,
  - (iv) amount of each type of material to be burned, and
  - (v) training objectives of the exercise.
- (B) The burning of salvageable items, including but not limited to insulated wire and electric motors, shall not be exempted as a fire training exercise, except as provided in Subpart (C) (iii) of this Subparagraph.
- (C) The regional office supervisor for the appropriate departmental field office may withhold approval for burnings purposely set for fire fighting exercises, other than those described in Subparagraphs (1), (2), and (3) of this Paragraph, in the following cases:
  - (i) when the required notice has not been received 48 hours in advance of the proposed burning;
  - (ii) when the required notice does not include adequate details about:
    - (I) the nature and location of the exercise,
    - (II) date and time that the exercise is to be held,
    - (III) nature of objects or materials to be burned,
    - (IV) amount of each type of material to be burned, and
    - (V) training objectives of the exercises;
  - (iii) when salvageable items are proposed to be burned in conjunction with the exercise, except that the regional office supervisor may allow an exercise involving the burning of a motor vehicle if the sole objective is instruction on the techniques of fighting such a fire; the number of motor vehicles burned over a period of time by any one training unit or by several related training units shall be considered in determining the objective of the exercises;
  - (iv) when the training unit has entered a formal

or informal contractual relationship prior to any burning incorporated into a training exercise wherein the unit is compensated for conducting the burning;

(5) fires purposely set by manufacturers of fire extinguishing materials or equipment, testing laboratories, or other persons approved by the Commission, for the purpose of testing or developing these materials or equipment in accordance with a valid standard qualification program;

(6) fires purposely set to agricultural lands for disease and pest control and other accepted agricultural or wildlife management practices acceptable to the Commission;

(7) fires purposely set to forest lands for forest management practices acceptable to the Division of forestry and the Commission;

(8) fires purposely set in rural areas for rights of way maintenance only in instances where there are no other practicable or feasible methods of disposal and under conditions acceptable to the Commission;

(9) camp fires and fires used solely for outdoor cooking and other recreational purposes, or for ceremonial occasions, or for human warmth and comfort;

(10) open burning of leaves, tree branches or yard trimmings originating on the premises of private residences and burned on these premises in areas where no public pickup facilities are available. The burning shall be between 8:00 a.m. and 6:00 p.m. and shall not create a nuisance;

(11) open burning for land clearing or right of way maintenance in areas other than those zoned solely residential or used primarily for residential purposes, if the following conditions are met:

(A) Prevailing winds at the time of burning shall be away from any city or town or built up area, the ambient air of which may be significantly affected by smoke, fly ash, or other air pollutants from the burning;

(B) The location of the burning shall be at least 1,000 feet from any dwelling located in a predominantly residential area other than a dwelling structure located on the property on which the burning is done;

(C) The amount of dirt on the material being burned shall be minimized;

(D) Heavy oils, asphaltic materials, items containing natural or synthetic rubber, or any materials other than plant growth shall not be burned;

(E) Initial burning shall generally begin only between the hours of 9:00 a.m. and 3:00 p.m., and no combustible material shall be added to the fire between 3:00 p.m. on one day and 9:00 a.m. on the following day, except that, under favorable meteorological conditions, deviation from these hours of burning may be granted by the air pollution control agency having jurisdiction. The owner or operator of the open burning operation shall be responsible for obtaining written approval for burning during periods other than those specified in this Part;

(12) fires for the disposal of dangerous materials where there is no alternative method of disposal, and burning is conducted in accordance with procedures acceptable to the Commission.

Statutory	Authority	G.S.	143-215.3(a)(1);
143-215.107(a)(5).			

**.0521 CONTROL OF VISIBLE EMISSIONS**

(a) Purpose. The intent of this Rule is to promulgate rules pertaining to the prevention, abatement, and control of emissions generated from fuel burning operations and other industrial processes where an emission can be reasonably expected to occur, except during startups made in accordance with procedures approved by the Commission.

(b) Scope. This Rule shall apply to all fuel burning sources and to other processes that may have a visible emission. However, sources subject to an emission standard in Rule .0508, .0524 or .0525 of this Section .0524, .1110, or .1111 of this Subchapter shall meet that standard.

(c) For sources existing as of July 1, 1971, visible emissions shall not be more than 40 percent opacity when averaged over a six-minute period except that six-minute periods averaging not more than 90 percent opacity may occur not more than once in any hour nor more than four times in any 24-hour period.

(d) For sources established after July 1, 1971, visible emissions shall not be more than 20 percent opacity when averaged over a six-minute period except that six-minute periods averaging not more than 87 percent opacity may occur not more than once in any hour nor more than four times in any 24-hour period.

(e) Where the presence of uncombined water is the only reason for failure of an emission to meet the limitations of Paragraph (c) or (d) of this Rule, those requirements shall not apply.

(f) Exception from Opacity Standard in Paragraph (d) of this Rule. Sources established after July 1, 1971, may, subject to the following conditions, receive an exception from the opacity standard contained in Paragraph (d) of this Rule. These sources may produce emissions up to those allowed by Paragraph (c) of this Rule if:

(1) The owner or operator of the source demonstrates compliance with applicable particulate mass emissions standards; and

(2) The owner or operator of the source submits necessary data to show that emissions up to

those allowed by Paragraph (c) of this Rule will not violate any national ambient air quality standard.

The burden of proving these conditions is on owner or operator of the source and shall be approached in the following manner. The owner or operator of a source seeking an exception shall make application to the Director requesting this modification in its permit. The applicant shall submit the results of a source test within 90 days of application. Source testing shall be by the appropriate procedure as designated by rule. During this same period the applicant shall submit data necessary to determine that emissions up to those allowed by Paragraph (c) of this Rule will not contravene ambient air quality standards. This evidence shall include, as a minimum, an inventory of past and projected emissions from the facility. In its review of ambient air quality, the Division of Environmental Management may require additional information that it considers necessary to assess the resulting ambient air quality. If the applicant can thus show that it will be in compliance both with particulate mass emissions standards and ambient air quality standards, his permit shall be modified to allow emissions up to those allowed by Paragraph (c) of this Rule.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

#### **.0524 NEW SOURCE PERFORMANCE STANDARDS**

(a) With the exception of Paragraph (b) of this Rule, sources Sources of the following types when subject to new source performance standards promulgated in 40 CFR Part 60 shall comply with the emission standards, monitoring and reporting requirements, maintenance requirements, notification and record keeping requirements, performance test requirements, test method and procedure provisions, and any other provisions, as required therein, rather than with any otherwise-applicable Rule in this Section which would be in conflict therewith. New sources of volatile organic compounds that are located in an area designated in 40 CFR 81.334 as nonattainment for ozone or an area identified in accordance with 15A NCAC 2D .0902(d) as being in violation of the ambient air quality standard for ozone shall comply with the following requirements, as well as with any applicable requirements in Section .0900 of this Subchapter:

- (1) fossil fuel fired steam generators (40 CFR 60.1 to 60.49, Subpart D);
- (2) incinerators (40 CFR 60.1 to 60.39 and 60.50 to 60.59, Subpart E);
- (3) portland cement plants (40 CFR 60.1 to 60.39 and 60.60 to 60.69, Subpart F);
- (4) nitric acid plants (40 CFR 60.1 to 60.39 and 60.70 to 60.79, Subpart G);
- (5) sulfuric acid plants (40 C.F.R. 60.1 to 60.39 and 60.80 to 60.89, Subpart H);
- (6) asphalt concrete plants (40 CFR 60.1 to 60.39 and 60.90 to 60.99, Subpart I);
- (7) petroleum refineries (40 CFR 60.1 to 60.39 and

- 60.100 to 60.109, Subpart J);
- (8) ~~storage vessels for petroleum liquids for which construction, reconstruction, or modification commenced after June 11, 1973, and prior to May 19, 1978 (40 CFR 60.1 to 60.39 and 60.110 to 60.119, Subpart K);~~
- (9) ~~secondary lead smelters (40 CFR 60.1 to 60.39 and 60.120 to 60.129, Subpart L);~~
- (10) ~~secondary brass and bronze ingot production plants (40 CFR 60.1 to 60.39 and 60.130 to 60.139, Subpart M);~~
- (11) ~~iron and steel plants (40 CFR 60.1 to 60.39 and 60.140 to 60.149, Subpart N);~~
- (12) ~~sewage treatment plants (40 CFR 60.1 to 60.39 and 60.150 to 60.159, Subpart O);~~
- (13) ~~phosphate fertilizer industry: wet process phosphoric acid plants (40 CFR 60.1 to 60.39 and 60.200 to 60.209, Subpart T);~~
- (14) ~~phosphate fertilizer industry: superphosphoric acid plants (40 CFR 60.1 to 60.39 and 60.210 to 60.219, Subpart U);~~
- (15) ~~phosphate fertilizer industry: diammonium phosphate plants (40 CFR 60.1 to 60.39 and 60.220 to 60.229, Subpart V);~~
- (16) ~~phosphate fertilizer industry: triple superphosphate plants (40 CFR 60.1 to 60.39 and 60.230 to 60.239, Subpart W);~~
- (17) ~~phosphate fertilizer industry: granular triple superphosphate storage facilities (40 CFR 60.1 to 60.39 and 60.240 to 60.249, Subpart X);~~
- (18) ~~steel industry: electric arc furnaces (40 CFR 60.1 to 60.39 and 60.270 to 60.279, Subpart AA);~~
- (19) ~~coal preparation plants (40 CFR 60.1 to 60.39 and 60.250 to 60.259, Subpart Y);~~
- (20) ~~primary copper smelters (40 CFR 60.1 to 60.39 and 60.160 to 60.169, Subpart P);~~
- (21) ~~primary zinc smelters (40 CFR 60.1 to 60.39 and 60.170 to 60.179, Subpart Q);~~
- (22) ~~primary lead smelters (40 CFR 60.1 to 60.39 and 60.180 to 60.189, Subpart R);~~
- (23) ~~primary aluminum reduction plants (40 CFR 60.1 to 60.39 and 60.190 to 60.199, Subpart S);~~
- (24) ~~ferroalloy production facilities (40 CFR 60.1 to 60.39 and 60.260 to 60.269, Subpart Z);~~
- (25) ~~kraft pulp mills (40 CFR 60.1 to 60.39 and 60.280 to 60.289, Subpart BB);~~
- (26) ~~grain elevators (40 CFR 60.1 to 60.39 and 60.300 to 60.309, Subpart DD);~~
- (27) ~~lime manufacturing plants (40 CFR 60.1 to 60.39 and 60.340 to 60.349, Subpart HH);~~
- (28) ~~stationary gas turbines (40 CFR 60.1 to 60.39 and 60.330 to 60.339, Subpart GG);~~
- (29) ~~electric utility steam generating units (40 CFR 60.1 to 60.39 and 40 CFR 60.40a to 60.49a, Subpart Da);~~
- (30) ~~storage vessels for petroleum liquids, for which~~

construction, reconstruction, or modification commenced after May 18, 1978 and prior to July 23, 1984 (40 CFR 60.1 to 60.39 and 40 CFR 60.110a to 60.119a, Subpart Ka);

(31) glass manufacturing plants (40 CFR 60.1 to 60.39 and 40 CFR 60.290 to 60.299, Subpart GG);

(32) lead acid battery manufacturing (40 CFR 60.1 to 60.39 and 40 CFR 60.370 to 60.379, Subpart KK);

(33) automobile and light duty truck surface coating operations (40 CFR 60.1 to 60.39 and 40 CFR 60.390 to 60.399, Subpart MM);

(34) phosphate rock plants (40 CFR 60.1 to 60.39 and 40 CFR 60.400 to 60.409, Subpart NN);

(35) ammonium sulfate manufacturing (40 CFR 60.1 to 60.39 and 40 CFR 60.420 to 60.429, Subpart PP);

(36) surface coating of metal furniture (40 CFR 60.1 to 60.39 and 40 CFR 60.310 to 60.319, Subpart EE);

(37) graphic arts industry: publication rotogravure printing (40 CFR 60.1 to 60.39 and 40 CFR 60.430 to 60.439, Subpart QQ);

(38) industrial surface coating: large appliances (40 CFR 60.1 to 60.39 and 40 CFR 60.450 to 60.459, Subpart SS);

(39) metal coil surface coating (40 CFR 60.1 to 60.39 and 40 CFR 60.460 to 60.469, Subpart TT);

(40) beverage can surface coating industry (40 CFR 60.1 to 60.39 and 40 CFR 60.490 to 60.499, Subpart WW);

(41) asphalt processing and asphalt roofing manufacture (40 CFR 60.1 to 60.39 and 40 CFR 60.470 to 60.479, Subpart UU);

(42) bulk gasoline terminals (40 CFR 60.1 to 60.39 and 40 CFR 60.500 to 60.509, Subpart XX);

(43) metallic mineral processing plants (40 CFR 60.1 to 60.39 and 40 CFR 60.380 to 60.389, Subpart LL);

(44) pressure sensitive tape and label surface coating operations (40 CFR 60.1 to 60.39 and 40 CFR 60.440 to 60.449, Subpart (R));

(45) equipment leaks of VOC in the synthetic organic chemicals manufacturing industry (40 CFR 60.1 to 60.39 and 40 CFR 60.480 to 60.489, Subpart VV);

(46) equipment leaks of VOC in petroleum refineries (40 CFR 60.1 to 60.39 and 40 CFR 60.590 to 60.599, Subpart GGG);

(47) synthetic fiber production facilities (40 CFR 60.1 to 60.39 and 40 CFR 60.600 to 60.609, Subpart HHH);

(48) flexible vinyl and urethane coating and printing (40 CFR 60.1 to 60.39 and 40 CFR 60.580 to 60.589, Subpart FFF);

(49) petroleum dry cleaners (40 CFR 60.1 to 60.39 and 60.620 to 60.629, Subpart III);

(50) onshore natural gas processing plants: equipment leaks of volatile organic compounds (40 CFR 60.1 to 60.39 and 60.630 to 60.639, Subpart KKK);

(51) wool fiberglass insulation manufacturing (40 CFR 60.1 to 60.39 and 60.680 to 60.689, Subpart PPP);

(52) nonmetallic mineral processing plants (40 CFR 60.1 to 60.39 and 60.670 to 60.679, Subpart OOO);

(53) steel plants: electric arc furnaces and argon oxygen decarburization vessels constructed after August 17, 1983 (40 CFR 60.1 to 60.39 and 60.270a to 60.279a, Subpart AAa);

(54) onshore natural gas processing: SO(2) emissions (40 CFR 60.1 to 60.39 and 60.640 to 60.649, Subpart LLL);

(55) basic oxygen process steelmaking facilities for which construction is commenced after January 20, 1983; (40 CFR 60.1 to 60.39 and 60.140a to 60.149a, Subpart Na);

(56) industrial commercial institutional steam generating units (40 CFR 60.1 to 60.39 and 60.40b to 60.49b, Subpart Db);

(57) volatile organic liquid storage vessels (including petroleum liquid storage vessels) for which construction, reconstruction, or modification commenced after July 23, 1984 (40 CFR 60.1 to 60.39 and 40 CFR 60.110b to 60.119b, Subpart Kb);

(58) rubber tire manufacturing industry (40 CFR 60.1 to 60.39 and 40 CFR 60.540 to 60.549, Subpart BBB);

(59) industrial surface coating: surface coating of plastic parts for business machines (40 CFR 60.1 to 60.39 and 40 CFR 60.720 to 60.729, Subpart TTT);

(60) magnetic tape coating facilities (40 CFR 60.1 to 60.39 and 40 CFR 60.710 to 60.719, Subpart SSS);

(61) volatile organic compound emissions from petroleum refinery wastewater systems (40 CFR 60.1 to 60.34 and 40 CFR 60.690 to 60.699, Subpart QQQ);

(62) volatile organic compound emissions from the synthetic organic chemical manufacturing industry air oxidation unit processes (40 CFR 60.1 to 60.34 and 40 CFR 60.610 to 60.618, Subpart III);

(63) volatile organic compound emissions from synthetic organic chemical manufacturing industry distillation operations (40 CFR 60.1 to 60.34 and 40 CFR 60.660 to 60.668, Subpart NNN);

(64) polymeric coating of supporting substrates facilities (40 CFR 60.1 to 60.34 and 40 CFR

(65) 60.740 to 60.748, Subpart VVV); small industrial commercial institutional steam generating units (40 CFR 60.1 to 60.34 and 40 CFR 60.40e to 60.48e, Subpart De);

(66) municipal waste combustors (40 CFR 60.1 to 60.34 and 40 CFR 60.50a to 60.59a, Subpart Ea);

(67) volatile organic emissions from the polymer manufacturing industry (40 CFR 60.1 to 60.34 and 40 CFR 60.560 to 60.566 except 40 CFR 60.562 2(e), Subpart DDD);

(68) volatile organic compound emissions from the synthetic chemical manufacturing industry reactor processes [40 CFR 60.1 to 60.34 and 40 CFR 60.700 to 60.708 except 40 CFR 60.703(e), Subpart RRR]; and

(69) calciners and dryers in mineral industries (40 CFR 60.1 to 60.34 and 40 CFR 60.730 to 60.737, Subpart UUU).

(b) Along with the notice appearing in the North Carolina Register for a public hearing to amend this Rule to exclude a standard from this Rule, the Director shall state whether or not the new source performance standards promulgated under 40 CFR Part 60, or part thereof, shall be enforced. If the Commission does not adopt the amendment to this Rule to exclude or amend the standard within 12 months after the close of the comment period on the proposed amendment, the Director shall begin enforcing that standard when 12 months has elapsed after the end of the comment period on the proposed amendment.

(c) New sources of volatile organic compounds that are located in an area designated in 40 CFR 81.334 as nonattainment for ozone or an area identified in accordance with 15A NCAC 2D .0902(d) as being in violation of the ambient air quality standard for ozone shall comply with the requirements of 40 CFR Part 60 that are not excluded by this Rule, as well as with any applicable requirements in Section .0900 of this Subchapter.

(d) (b) All requests, reports, applications, submittals, and other communications to the administrator required under Paragraph (a) of this Rule shall be submitted to the Director of the Division of Environmental Management rather than to the Environmental Protection Agency.

(e) (e) In the application of this Rule, definitions contained in 40 CFR Part 60 shall apply rather than those of Section .0100 of this Subchapter.

(f) (d) 15A NCAC 2Q .0102 and .0302 are not applicable to any source to which this Rule applies. The owner or operator of the source shall apply for and receive a permit as required in 15A NCAC 2Q .0300 or .0500.

(e) The Code of Federal Regulations cited in this Rule are incorporated by reference and shall automatically include any later amendments thereto except for categories of sources not referenced in Paragraph (a) of this Rule. Categories of sources not referenced in Paragraph (a) of this Rule for which EPA has promulgated new source performance standards in 40 CFR Part 60, if and when incorpo-

rated into this Rule, shall be incorporated using rule making procedures.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 150B-21.6.

## .0525 NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

(a) Sources emitting pollutants of the following types when subject to national emission standards for hazardous air pollutants promulgated in 40 CFR Part 61 shall comply with emission standards, monitoring and reporting requirements, maintenance requirements, notification and record keeping requirements, performance test requirements, test method and procedural provisions, and any other provisions, as required therein, rather than with any otherwise applicable rule in this Section. New sources of volatile organic compounds that are located in an area designated in 40 CFR 81.334 as nonattainment for ozone or an area identified in accordance with 15A NCAC 2D .0902(d) as being in violation of the ambient air quality standard for ozone shall comply with the following requirements, as well as with any applicable requirements in Section .0900 of this Subchapter:

- (1) asbestos (40 CFR 61.01 to 61.19 and 61.140 to 61.159, Subpart M, with the exception named in 40 CFR 61.157);
- (2) beryllium (40 CFR 61.01 to 61.19 and 61.30 to 61.39, Subpart C);
- (3) beryllium from rocket motor firing (40 CFR 61.01 to 61.19 and 61.40 to 61.49, Subpart D);
- (4) mercury (40 CFR 61.01 to 61.19 and 61.50 to 61.59, Subpart E);
- (5) vinyl chloride (40 CFR 61.01 to 61.19 and 61.60 to 61.71, Subpart F);
- (6) equipment leaks (fugitive emission sources) of benzene (40 CFR 61.01 to 61.19 and 61.110 to 61.119, Subpart J);
- (7) equipment leaks (fugitive emission sources) of volatile hazardous air pollutants (40 CFR 61.01 to 61.19 and 61.240 to 61.249, Subpart V);
- (8) inorganic arsenic emissions from glass manufacturing plants (40 CFR 61.01 to 61.19 and 61.160 to 61.169, Subpart N);
- (9) inorganic arsenic emissions from primary copper smelters (40 CFR 61.01 to 61.19 and 61.170 to 61.179, Subpart O);
- (10) inorganic arsenic emissions from arsenic trioxide and metallic arsenic production facilities (40 CFR 61.01 to 61.19 and 61.180 to 61.186, Subpart P);
- (11) benzene emissions from benzene transfer operations (40 CFR 61.01 to 61.19 and 61.300 to 61.306, Subpart BB);
- (12) benzene waste operations (40 CFR 61.01 to 61.19 and 61.340 to 61.358, Subpart FF);
- (13) benzene emissions from coke by product recov-

ery plants (40 CFR 61.01 to 61.19 and 61.130 to 61.139, Subpart L);

(14) benzene emissions from benzene storage vessels (40 CFR 61.01 to 61.19 and 61.270 to 61.277 except 61.273, Subpart Y).

(b) All requests, reports, applications, submittals, and other communications to the administrator required under Paragraph (a) of this Rule shall be submitted to the Director of the Division of Environmental Management rather than to the Environmental Protection Agency; except that all such reports, applications, submittals, and other communications to the administrator required by 40 CFR 61.145 shall be submitted to the Director, Division of Epidemiology.

(c) In the application of this Rule, definitions contained in 40 CFR Part 61 shall apply rather than those of Section .0100 of this Subchapter.

(d) 15A NCAC 2Q .0102 and .0302 are not applicable to any source to which this Rule applies. The owner or operator of the source shall apply for and receive a permit as required in 15A NCAC 2Q .0300 or .0500.

(e) The Code of Federal Regulations cited in this Rule are incorporated by reference and shall automatically include any later amendments thereto except for categories of sources not referenced in Paragraph (a) of this Rule. Categories of sources not referenced in Paragraph (a) of this Rule for which EPA has promulgated national emission standards for hazardous air pollutants in 40 CFR Part 61, if and when incorporated into this Rule, shall be incorporated using rule making procedures.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 150B-21.6.

**.0533 STACK HEIGHT**

(a) For the purpose of this Rule, the following definitions apply:

(1) "Stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.

(2) "A stack in existence" means that the owner or operator had:

(A) begun, or caused to begin, a continuous program of physical on-site construction of the stack; or

(B) entered into binding agreements or contractual obligations, which could not be cancelled or modified without substantial loss to the owner or operator, to undertake a program of construction of the stack to be completed in the time that is normally required to construct such a stack.

(3) "Dispersion technique"

(A) "Dispersion technique" means any technique which attempts to affect the concentration of a pollutant in the ambient air by:

(i) using that portion of a stack which exceeds good engineering practice stack height,

(ii) varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant, or increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise.

(B) "Dispersion technique" does not include:

(i) the reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream;

(ii) the using of smoke management in agricultural or silvicultural prescribed burning programs;

(iii) the merging of exhaust gas streams where:

(I) The facility owner or operator demonstrates that the source was originally designed and constructed with such merged gas streams;

(II) After July 8, 1985, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from the definition of "dispersion techniques" shall apply only to the emission limitation for the pollutant affected by such change in operation; or

(III) Before July 8, 1985, such merging was part of a change in operation at the source that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or in the event that no emission limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the Director shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the source owner or operator that merging was not significantly motivated by such intent, the Director shall deny credit for the effects of such merging in calculating the allowable emissions for the source;

(IV) Episodic restrictions on residential woodburning and open burning; or

(V) Techniques under Subpart (A)(iii) of this Subparagraph which increase final exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.

(4) "Good engineering practice (GEP) stack height" means the greater of:

(A) 65 meters measured from the ground-level elevation at the base of the stack;

(B) 2.5 times the height of nearby structure(s) measured from the ground-level elevation at the base of the stack for stacks in existence on January 12, 1979 and for which the owner or operator had obtained all applicable permit or approvals required under 15A NCAC 2Q and 40 CFR Parts 51 and 52, provided the owner or operator produces evidence that this equation was actually relied on in establishing an emission limitation;

(C) for stacks not covered under Part (B) of this Subparagraph, the height of nearby structure(s) measured from the ground-level elevation at the base of the stack plus 1.5 times the lesser dimension (height or projected width) of nearby structure(s) provided that the Director may require the use of a field study or fluid model to verify GEP stack height for the source; or

(D) the height demonstrated by a fluid model or a field study approved by the Director, which ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures or nearby terrain features.

(5) "Nearby" means, for a specific structure or terrain feature:

(A) under Parts (4)(B) and (C) of this Paragraph, that distance up to five times the lesser of the height or the width dimension of a structure but not greater than one-half mile. The height of the structure is measured from the ground-level elevation at the base of the stack.

(B) Under under Part (4)(D) of this Paragraph, not greater than one-half mile, except that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to 10 times the maximum height [Ht] of the feature, not to exceed two miles if such feature achieves a height [ht] one-half mile from the stack that is at least 40 percent of the GEP stack height determined by Part (4)(C) of this Paragraph or 26 meters, whichever is greater, as measured from the ground-level elevation at the base of the stack. The height of the structure or terrain feature is measured from the ground-level elevation at the base of the stack. "Excessive concentrations" means, for the purpose of determining good engineering practice stack height under Part (4)(D) of this Paragraph:

(A) for sources seeking credit for stack height exceeding that established under Part (4)(B) or (C) of this Paragraph, a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and which contributes to a total concentration due to emissions from all sources that is greater than an ambient air quality standard. For sources subject to Rule .0530 of this Section, an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes, or eddy effects produced by nearby structures or nearby terrain features which individually is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than a prevention of significant deterioration increment. The allowable emission rate to be used in making demonstrations under this Part shall be prescribed by the new source performance standard that is applicable to the source category unless the owner or operator demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the Director, an alternative emission rate shall be established in consultation with the source owner or operator;

(B) for sources seeking credit after October 11, 1983, for increases in existing stack heights up to the heights established under Part (4)(B) or (C) of this Paragraph;

(i) a maximum ground-level concentration due in whole or part to downwash, wakes or eddy effects as provided in Part (A) of this Subparagraph, except that the emission rate specified by any applicable Rule in this Subchapter (or, in the absence of such a limit, the actual emission rate) shall be used, or

(ii) the actual presence of a local nuisance (odor, visibility impairment, or pollutant

concentration) caused by the existing stack, as determined by the Director; and

(C) for sources seeking credit after January 12, 1979, for a stack height determined under Part (4)(B) or (C) of this Paragraph where the Director requires the use of a field study or fluid model to verify GEP stack height, for sources seeking stack height credit after November 9, 1984 based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit after December 31, 1970 based on the aerodynamic influence of structures not adequately represented by Part (4)(B) or (C) of this Paragraph, a maximum ground-level concentration due in whole or part to downwash, wakes, or eddy effects that is at least 40 percent in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

(7) "Emission limitation" means a requirement established by this Subchapter or a local air quality program certified by the Commission that limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements that limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.

(b) With the exception stated in Paragraphs (c) and (d) of this Rule, the degree of emission limitations required by any rule in this Subchapter shall not be affected by:

- (1) that amount of a stack height that exceeds good engineering practice; or
- (2) any other dispersion technique.

(c) Paragraph (b) shall not apply to:

- (1) stack heights in existence or dispersion techniques implemented before December 31, 1970, except where pollutants are being emitted from such stacks or using such dispersion techniques by sources, as defined in Section 111(a)(3) of the Clean Air Act, which were constructed, or reconstructed, or for which major modifications, as defined in Rules .0530 (b) and .0531 (b) of this Section were carried out after December 31, 1970; or
- (2) coal-fired steam electric generating units, subject to provisions of Section 118 of the federal Clean Air Act, which began operation before July 1, 1957, and whose stacks were constructed under a construction contract awarded before February 8, 1974.

However, these exemptions shall not apply to a new stack that replaces a stack that is exempted by Subparagraphs (1) and (2) of this Paragraph. These exemptions shall not apply to a new source using a stack that is exempted by Subparagraphs (1) and (2) of this Paragraph.

(d) This Rule shall not restrict the actual stack height of any source.

*Statutory Authority G.S. 143-215.3(a)(1).*

#### **.0535 EXCESS EMISSIONS REPORTING AND MALFUNCTIONS**

(a) For the purpose of this Rule the following definitions apply:

- (1) "Excess Emissions" means an emission rate that exceeds any applicable emission limitation or standard allowed by any rule in Sections .0500, .0900, or .1200 of this Subchapter; or by a permit condition; or that exceeds an emission limit established in a permit issued under 15A NCAC 2H .0610.
- (2) "Malfunction" means any unavoidable failure of air pollution control equipment, process equipment, or process to operate in a normal and usual manner that results in excess emissions. Excess emissions during periods of routine start-up and shut-down of process equipment are not considered to be a malfunction. Failures caused entirely or in part by poor maintenance, careless operations or any other upset condition within the control of the emission source are not considered a malfunction.
- (3) "Start-up" means the commencement of operation of any source which has shut-down or ceased operation for a period of time sufficient to cause temperature, pressure, process, chemical, or pollution control device imbalance which would result in excess emission.
- (4) "Shut-down" means the cessation of the operation of any source for any purpose.

(b) This Regulation Rule does not apply to sources to which Regulation .0524 or .0525 of this Section Rules .0524, .1110, or .1111 of this Subchapter applies unless excess emissions exceed an emission limit established in a permit issued under 15A NCAC 2H .0610 that is more stringent than the emission limit set by Regulation .0524 or .0525 of this Section Rules .0524, .1110 or .1111 of this Subchapter.

(c) Any excess emissions that do not occur during start-up or shut-down shall be considered a violation of the appropriate regulation rule unless the owner or operator of the source of excess emissions demonstrates to the Director, that the excess emissions are the result of a malfunction. To determine if the excess emissions are the result of a malfunction, the Director shall consider, along with any other pertinent information, the following:

- (1) The air cleaning device, process equipment, or process has been maintained and operated, to the maximum extent practicable, in a manner consistent with good practice for minimizing emissions;
- (2) Repairs have been made in an expeditious man-

ner when the emission limits have been exceeded;

(3) The amount and duration of the excess emissions, including any bypass, have been minimized to the maximum extent practicable;

(4) All practical steps have been taken to minimize the impact of the excess emissions on ambient air quality;

(5) The excess emissions are not part of a recurring pattern indicative of inadequate design, operation, or maintenance;

(6) The requirements of Paragraph (f) of this Regulation Rule have been met; and

(7) If the source is required to have a malfunction abatement plan, it has followed that plan.

All malfunctions shall be repaired as expeditiously as practicable. However, the Director shall not excuse excess emissions caused by malfunctions from a source for more than 15 percent of the operating time during each calendar year.

(d) All electric utility boiler units subject to a regulation rule in this Section shall have a malfunction abatement plan approved by the Director. In addition, the Director may require any other source to have a malfunction abatement plan approved by the Director. The malfunction plans of electric utility boiler units and of other sources required to have them shall be implemented when a malfunction or other breakdown occurs. The purpose of the malfunction abatement plan is to prevent, detect, and correct malfunctions or equipment failures that could result in excess emissions. A malfunction abatement plan shall contain as a minimum:

(1) a complete preventive maintenance program including:

- (A) the identification of individuals or positions responsible for inspecting, maintaining and repairing air cleaning devices;
- (B) a description of the items or conditions that will be inspected and maintained;
- (C) the frequency of the inspection, maintenance services and repairs; and
- (D) an identification and quantities of the replacement parts which shall be maintained in inventory for quick replacement;

(2) an identification of the source and air cleaning operating variables and outlet variables, such as opacity, grain loading, and pollutant concentration, that may be monitored in order to detect a malfunction or failure; the normal operating range of these variables and a description of the method of monitoring or surveillance procedures and of informing operating personnel of any malfunctions, including alarm systems, lights or other indicators; and

(3) a description of the corrective procedures that will be taken in the event of a malfunction or failure in order to achieve compliance with the

applicable regulation rule as expeditiously as practicable but no longer than the next boiler or process outage that would provide for an orderly repair or correction of the malfunction or 15 days, whichever is the shorter time interval. If it is anticipated that the malfunction would continue for more than 15 days, a case-by-case repair schedule will be established by the Director in conjunction with the source.

The owner or operator shall maintain logs to show that the operation and maintenance parts of the malfunction abatement plan are implemented. These logs shall be subject to inspection by the Director or his designee upon request during business hours.

(e) The owner or operator of any electric utility boiler unit required to have a malfunction abatement plan shall submit a malfunction abatement plan to the Director within 60 days of the effective date of this Regulation Rule. The owner or operator of any other source required by the Director to have a malfunction abatement plan shall submit a malfunction abatement plan to the Director within six months after it has been required by the Director. The malfunction abatement plan and any amendment to it shall be reviewed by the Director or his designee. If the plan is satisfactory, the Director shall approve it. If the plan does not adequately carry out the objectives described by Paragraph (d) of this Regulation Rule, the Director shall disapprove the plan. The Director shall state his reasons for his disapproval. The person who submits the plan shall satisfactorily amend the plan as required by the Director within a period of time prescribed by the Director. Any person having an approved malfunction abatement plan shall submit to the Director for his approval amendments reflecting changes in any element of the plan required by Paragraph (d) of this Regulation Rule or amendments when requested by the Director. The malfunction abatement plan and amendments to it shall be implemented within 90 days upon receipt of written notice of approval.

(f) The owner or operator of a source of excess emissions which last for more than four hours and which results from a malfunction, a breakdown of process or control equipment or any other abnormal conditions, shall:

- (1) notify the Director or his designee of any such occurrence within 24 hours of becoming aware of the occurrence and describe:
  - (A) name and location of the facility,
  - (B) the nature and cause of the malfunction or breakdown,
  - (C) the time when the malfunction or breakdown is first observed,
  - (D) the expected duration, and
  - (E) an estimated rate of emissions;
- (2) notify the Director or his designee immediately when the corrective measures have been accomplished;
- (3) submit, if requested, to the Director within 15 days after the request a written report which

includes:

- (A) name and location of the facility,
- (B) identification or description of the processes and control devices involved in the malfunction or breakdown,
- (C) the cause and nature of the event,
- (D) time and duration of the violation or the expected duration of the excess emission if the malfunction or breakdown has not been fixed,
- (E) estimated quantity of pollutant emitted,
- (F) steps taken to control the emissions and to prevent recurrences and if the malfunction or breakdown has not been fixed, steps planned to be taken, and
- (G) any other pertinent information requested by the Director.

After the malfunction or breakdown has been corrected, the Director may require the owner or operator of the source to test the source in accordance with Regulation Rule .0501 of this Section to demonstrate compliance.

(g) Start-up and shut-down. Excess emissions during start-up and shut-down shall be considered a violation of the appropriate regulation rule if the owner or operator cannot demonstrate that the excess emissions are unavoidable when requested to do so by the Director. The Director may specify for a particular source the amount, time, and duration of emissions that are allowed during start-up or shut-down. The owner or operator shall, to the extent practicable, operate the source and any associated air pollution control equipment or monitoring equipment in a manner consistent with best practicable air pollution control practices to minimize emissions during start-up and shut-down.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(4); 143-215.107(a)(5).

#### .0537 CONTROL OF MERCURY EMISSIONS

(a) For the purpose of this Regulation Rule, the following definitions apply:

- (1) "Mercury" means the element mercury, excluding any associated elements, and includes mercury in particulates, vapors, aerosols, and compounds.
- (2) "Stationary source" means the total plant site. This includes all emissions (stacks, ducts, vents, openings, fugitives, etc.) to the atmosphere within the property boundary.
- (b) This Regulation Rule shall apply to all new and existing stationary sources engaged in the handling and/or or processing of mercury and not subject to standards on emissions for mercury in Regulation .0525 or .0530 of this Section Rule .0530, .1110, or .1111 of this Subchapter.

(c) An owner or operator of a stationary source engaged in the handling and/or or processing of mercury shall not cause, allow, or permit particulate and/or or gaseous mercury emissions in excess of 2300 grams per day into the

outdoor atmosphere.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

#### .0539 ODOR CONTROL OF FEED INGREDIENT MANUFACTURING PLANTS

(a) Applicability. The requirements of this Rule apply to any facility that produces feed-grade animal proteins or feed-grade animal fats and oils, but do not apply to any portions of such facilities that are engaged exclusively in the processing of food for human consumption.

(b) This Rule does not apply to those facilities solely engaged in the processing of marine byproducts. Those facilities, however, shall continue to control their odorous emissions in accordance with Rule .0522 of this Section.

(c) A person shall not allow, cause, or permit the operation or use of any device, machine, equipment, or other contrivance to process material to be used in the production of feed-grade animal proteins or feed-grade animal fats and oils unless all gases, vapors, and gas-entrained effluents from these processes are passed through condensers to remove all steam and other condensable materials. All noncondensibles passing through the condensers shall then be incinerated at 1200 degrees Fahrenheit for a period of not less than 0.3 seconds, or treated in an equally effective manner.

(d) Measurement and Recording Requirements. Any person processing or incinerating gases, vapors, or gas-entrained matter as required by Paragraph (c) of this Rule shall install, operate, and maintain in good working order and calibration continuous measuring and recording devices to document equipment operation in accordance with this Rule. In addition, the owner or operator of the facility shall:

- (1) demonstrate that the measuring and recording devices are capable of verifying the compliance status of the equipment on a continuous basis;
- (2) describe the parameters to be used to determine the compliance status and how these parameters:
  - (A) are to be measured,
  - (B) are to be used to determine compliance status; and
- (3) provide a quality assurance program approved by the Director for all monitoring devices and systems that includes:
  - (A) procedures and frequencies for calibration,
  - (B) standards traceability,
  - (C) operational checks,
  - (D) maintenance schedules and procedures,
  - (E) auditing schedules and procedures,
  - (F) data validation, and
  - (G) schedule for implementing the quality assurance program.

These data shall be available to the Director upon request.

(e) A person shall not allow, cause, or permit the installation or operation of expeller units unless they are

properly hooded and all exhaust gases are collected or ducted to odor control equipment.

(f) A person subject to this Rule shall not cause or permit any raw material to be handled, transported, or stored, or to undertake the preparation of any raw material without taking reasonable precautions to prevent odors from being discharged. For the purpose of this Rule, such raw material is in "storage" after it has been unloaded at a facility or after it has been located at the facility for at least 24 hours. Reasonable precautions shall include the following:

- (1) storage of all raw material before or in the process of preparation, in properly enclosed and vented equipment or areas, together with the use of effective devices and methods to prevent the discharge of odor bearing gases;
- (2) use of covered vehicles or containers of watertight construction for the handling and transporting of any raw material; and
- (3) use of hoods and fans to enclose and vent the storage, handling, preparation, and conveying of any odorous materials together with effective devices or methods, or both, to prevent emissions of odors or odor bearing gases.

(g) Whenever conditions are encountered that cause or may cause release of excessive and malodorous gases or vapors, the regional supervisor of the appropriate regional office shall be notified within two business days.

(h) Compliance Schedule. The owner or operator of a facility subject to this Rule that begins construction or is in operation before May 1, 1996, shall adhere to the following increments of progress and schedules:

- (1) documentation that the facility complies with this Rule or an air permit application containing plans to bring the facility into compliance and a schedule shall be submitted by November 1, 1996;
- (2) the compliance schedule shall contain the following increments of progress:
  - (A) a date by which contracts for the emission control system and process equipment shall be awarded or orders shall be issued for purchase of component parts;
  - (B) a date by which on-site construction or installation of the emission control and process equipment shall begin;
  - (C) a date by which on-site construction or installation of the emission control and process equipment shall be completed; and
  - (D) a date by which final compliance shall be achieved.
- (3) The final compliance date under Subparagraph (2)(D) of this Paragraph shall be no later than May 1, 2001.

The owner or operator shall certify to the Director within five days after the deadline, for each increment of progress, whether the required increment of progress has been met.

- (i) The owner or operator of a facility that begins

construction after April 30, 1996, shall be in compliance with this Rule before beginning operation.

Statutory Authority G.S. 143-215.3 (a)(1); 143-215.66; 143-215.107 (a)(5).

## SECTION .0600 - AIR POLLUTANTS: MONITORING: REPORTING

### .0601 PURPOSE AND SCOPE

(a) The purpose of this Section is to set forth the requirements of the Commission relating to monitoring air pollution emissions and filing reports covering their discharge into the outdoor atmosphere of the state.

(b) This Section shall apply to all persons subject to the provisions of 15A NCAC 2Q.

(c) Monitoring may also be required by other rules including Rule .0524, .1110, or .1111 .0524 and .0525 of this Subchapter.

Statutory Authority G.S. 143-215.3(a)(1).

### .0604 SOURCES COVERED BY IMPLEMENTATION PLAN REQUIREMENTS

(a) Sources covered by ~~Regulations .0524 and .0525~~ Rules .0524, .1110, or .1111 of this Subchapter are exempt from this Regulation. Pursuant to 150B 14(e) to include any later amendments, the Rule. The following sources, which are included in Paragraph 1.1 of Appendix P of 40CFR Part 51:

- (1) fossil fuel-fired steam generators,
- (2) nitric acid plants,
- (3) sulfuric acid plants, and
- (4) petroleum refineries.

shall be monitored as described in Paragraphs 2 and 3.1.1 through 3.1.5 of Appendix P of 40 CFR Part 51. The performance specifications are those found in Appendix B of 40 CFR Part 60 and Paragraphs 3.2 through 3.8 of Appendix P of 40 CFR Part 51. The excess emissions shall be reported quarterly to the commission in the manner described in Paragraphs 4 and 5.1 through 5.3.3 of Appendix P of 40 CFR Part 51 except as otherwise provided in this Section. The minimum requirements described in the referenced portions of Appendix P of 40 CFR Part 51 are hereby adopted as the requirements to be used under this Regulation Rule. Wherever the language of the referenced portion of Appendix P of 40 CFR Part 51 speaks of the "state" or "state plan", the requirements described therein shall apply to those sources to which they pertain.

(b) When effluents from two or more affected facilities of similar design and operating characteristics are combined before being released to the atmosphere, the monitoring system may be installed on the combined effluent.

(c) A six-minute time period shall be deemed appropriate as an alternative opacity averaging time period as described in Paragraph 4.2 of Appendix P of 40 CFR Part 51.

(d) Data reporting or reduction procedures varying from

those prescribed by this **Regulation Rule** may be used if the owner or operator of a source shows to the satisfaction of the Director that the alternate procedures are at least as accurate as those in the **Regulation Rule**.

(e) Alternative monitoring and reporting requirements may be approved, on a case-by-case basis, by the Director through the following procedure:

- (1) The owner or operator of a source may apply in writing to the Director for approval of alternative monitoring and reporting requirements. The application shall include:
  - (A) the basis or reason that alternative monitoring and reporting requirements are more desirable than those prescribed by this **Regulation Rule**,
  - (B) a proposal of alternative monitoring and reporting requirements,
  - (C) any other information that the source owner or operator feels would be helpful to the Director in his evaluation of the application.
- (2) Examples of situations where alternative monitoring and reporting requirements may be approved include, but are not limited to, the following:
  - (A) when installation of a continuous monitoring system or device prescribed by this **Regulation Rule** would not provide accurate determinations of emissions;
  - (B) when the affected facility is operated on less than 30 days per year;
  - (C) when effluents from two or more facilities of significantly different design and operating characteristics are combined before release to the atmosphere or when the effluent is released to the atmosphere through more than one point;
  - (D) when the Director determines that the requirements prescribed by this **Regulation Rule** would impose an extreme economic burden on the source owner or operator; The determination of an extreme economic burden shall be made on the basis of whether meeting the requirements prescribed by this **Regulation Rule** would produce serious hardship without equal or greater benefit to the public;
  - (E) when the monitoring systems prescribed by this **Regulation Rule** cannot be installed due to physical limitations at the facility; The determination of such limitations shall be made on the basis of whether meeting the requirements prescribed by this **Regulation Rule** would necessitate significant reconstruction of the facility.
- (3) The Director may require the submission of additional information as he considers appropriate to evaluate the application.
- (4) Upon making a determination that the source should be is subject to an alternative monitoring

and reporting requirements, the Director may approve either the proposed alternative monitoring and reporting requirements or any other monitoring and reporting requirements that he considers appropriate and feasible.

*Statutory Authority G.S. 143-215.3(a)(1).*

#### **.0608 PROGRAM SCHEDE**

(a) All persons required to report emissions by **Regulation Rules .0524, .0525, .0604, .0605 or .0606 .0605, or .0606, .1110, or .1111** of this Subchapter shall have in operation a monitoring program for each affected source upon beginning operation of a new source or within 18 months after an existing source becomes subject to **Regulation Rules .0604, .0605 or .0606** of this Section. However, reasonable extensions of these deadlines may be granted as described in 40 CFR 51.18(e)(5) and Paragraph 1.3 of Appendix P of 40 CFR Part 51. The monitoring program shall remain in effect as long as the source is required to monitor and report its emissions under the requirements of this Section.

(b) All persons required to report emissions by **Regulation Rules .0605 or .0606** of this Section shall submit to the **division Division of environmental management Environmental Management** for review and approval a program for complying with such requirements. The program shall include a statement concerning:

- (1) the qualifications of the personnel who will be doing the sampling and sample analysis,
- (2) the date by which the first report will be submitted, and
- (3) a description of the procedures and equipment for sampling and sample analysis.

*Statutory Authority G.S. 143-215.3(a)(1).*

### **SECTION .0900 - VOLATILE ORGANIC COMPOUNDS**

#### **.0902 APPLICABILITY**

(a) Rules .0925, .0926, .0927, .0928, .0932, and .0933 of this Section apply statewide, in accordance with Rule .0946 of this Section.

(b) Rule .0953 of this Section applies in Davidson, Durham, Forsyth, Gaston, Guilford, Mecklenburg, Wake, Dutchville Township in Granville County, and that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River in accordance with provisions set out in that Rule.

(c) With the exceptions stated in Paragraph (g) of this Rule, this Section applies, in accordance with Rules .0907 and .0946 of this Section, to all sources of volatile organic compounds located in an area designated in 40 CFR 81.334 as nonattainment for ozone.

(d) With the exceptions stated in Paragraph (g) of this

Rule, this Section shall apply, in accordance with Rule .0909 of this Section, to all sources of volatile organic compounds located in any of the following areas and in that area only when the Director notices in the North Carolina Register that the area is in violation of the ambient air quality standard for ozone:

- (1) Greensboro/Winston-Salem/High Point, consisting of Davidson, Forsyth, and Guilford Counties and that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River; or
- (2) Raleigh/Durham, consisting of Durham and Wake Counties and Dutchville Township in Granville County.

At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice of violation, the Director shall send written notification to all permitted facilities within the area of violation that are or may be subject to the requirements of this Section as a result of the violation informing them that they are or may be subject to the requirements of this Section. Violations of the ambient air quality standard for ozone shall be determined in accordance with 40 CFR 50.9.

(e) If a violation of the ambient air quality standard for ozone is measured in accordance with 40 CFR 50.9 in Cabarrus, Gaston, Iredell, Lincoln, Mecklenburg, Rowan, or Union County, North Carolina or York County, South Carolina, the Director shall initiate analysis to determine the control measures needed to attain and maintain the ambient air quality standard for ozone. By the following May 1, the Director shall implement the specific stationary source control measures contained in this Section that are required as part of the control strategy necessary to bring the area into compliance and to maintain compliance with the ambient air quality standard for ozone. The Director shall implement the rules in this Section identified as being necessary by the analysis by notice in the North Carolina Register. The notice shall identify the rules that are to be implemented and shall identify whether the rules implemented are to apply in Gaston or Mecklenburg County or in both counties. At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice implementing rules in this Section, the Director shall send written notification to all permitted facilities within the county in which the rules are being implemented that are or may be subject to the requirements of this Section informing them that they are or may be subject to the requirements of this Section. Compliance shall be in accordance with Rule .0909 of this Section.

(f) This Section shall not apply to facilities in Mecklenburg county whose potential emissions of volatile organic compounds are less than 100 tons per year or to facilities in Gaston County until May 1, 1997. If Mecklenburg County is designated attainment in 40 CFR 81.334, all sources in Mecklenburg County subject to a rule in this Section before May 1, 1997, shall continue to comply

with all such applicable rules in this Section. If any county or part of a county to which the Section applies in accordance with Paragraph (c) of this Rule is later designated in 40 CFR 81.334 as attainment for ozone, all sources in that county or that part of the county subject to a rule in this Section before the redesignation date shall continue to comply with all applicable rules in this Section.

(g) This Section does not apply to:

- (1) sources whose emissions of volatile organic compounds are not more than 15 pounds per day, except that this Section does apply to the manufacture and use of cutback asphalt and to gasoline service stations or gasoline dispensing facilities regardless of levels of emissions of volatile organic compounds;
- (2) sources used exclusively for chemical or physical analysis or determination of product quality and commercial acceptance provided:
  - (A) The operation of the source is not an integral part of the production process;
  - (B) The emissions from the source do not exceed 800 pounds per calendar month; and
  - (C) The exemption is approved in writing by the Director as meeting the requirements of this Subparagraph; or
- (3) emissions of volatile organic compounds during startup or shutdown operations from sources which use incineration or other types of combustion to control emissions of volatile organic compounds whenever the off-gas contains an explosive mixture during the startup or shutdown operation if the exemption is approved by the Director as meeting the requirements of this Subparagraph.

(h) Sources whose emissions of volatile organic compounds are not subject to limitation under this Section may still be subject to emission limits on volatile organic compounds in Rule .0524 or .0525 .0524, .1110, or .1111 of this Subchapter.

Statutory Authority G.S. 143-215.3(a)(1);  
143-215.107(a)(5).

#### .0929 PETROLEUM REFINERY SOURCES

(a) For the purpose of this Regulation, the following definitions apply:

- (1) "Accumulator" means the reservoir of a condensing unit receiving the condensate from the condenser.
- (2) "Condenser" means any heat transfer device used to liquefy vapors by removing their latent heats of vaporization. Such devices include, but are not limited to, shell and tube, coil, surface, or contact condensers.
- (3) "Firebox" means the chamber or compartment of a boiler or furnace in which materials are burned but does not mean the combustion cham-

ber of an incinerator.

(4) "Forebays" mean the primary sections of a wastewater separator.

(5) "Hot well" means the reservoir of a condensing unit receiving the warm condensate from the condenser.

(6) "Petroleum refinery" means any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation, cracking, extraction, or reforming of unfinished petroleum derivatives.

(7) "Refinery fuel gas" means any gas which is generated by a petroleum refinery process unit and which is combusted, including any gaseous mixture of natural gas and fuel gas.

(8) "Turnaround" means the procedure of shutting a refinery unit down after a run to do necessary maintenance and repair work and putting the unit back on stream.

(9) "Vacuum producing system" means any reciprocating, rotary, or centrifugal blower or compressor, or any jet ejector or device which takes suction from a pressure below atmospheric and discharges against atmospheric pressure.

(10) "Vapor recovery system" means a system which prevents release to the atmosphere of no less than 90 percent by weight of organic compounds emitted during the operation of any transfer, storage, or process equipment.

(11) "Wastewater (oil/water) separator" means any device or piece of equipment which utilizes the difference in density between oil and water to remove oil and associated chemicals from water or any device, such as a flocculation tank, clarifier, etc., which removes petroleum derived compounds from wastewater.

(b) This Regulation applies to vacuum producing systems, wastewater separators, and process unit turnarounds at petroleum refining sources.

(c) The owner or operator of any vacuum producing systems at a petroleum refinery shall not permit the emissions of any noncondensable volatile organic compounds from the condensers, hot wells, or accumulators of the system.

(d) The emission limit required by Paragraph (c) of this Regulation shall be achieved by:

- (1) piping the noncondensable vapors to a firebox or incinerator; or
- (2) compressing the vapors and adding them to the refinery fuel gas.

(e) The owner or operator of any wastewater (oil/water) separators at a petroleum refinery shall:

- (1) provide covers and seals approved by the Director, on all separators and forebays; and
- (2) equip all openings in covers, separators, and forebays with lids or seals such that the lids or

seals are in the closed position at all times except when in actual use.

(f) Notwithstanding Regulations .0907 through .0911 of this Section, before November 1, 1979, the owner or operator of an existing (as of June 30, 1979) petroleum refinery shall develop and submit to the Director for approval a detailed procedure for minimization of volatile organic compound emissions during process unit turnaround. As a minimum, the procedure shall provide for:

- (1) depressurization venting of the process unit or vessel to a vapor recovery system, flare, or firebox;
- (2) no emission of volatile organic compounds from a process unit or vessel until its internal pressure is 19.7 psia or less;
- (3) recordkeeping of the following items in accordance with Regulation .0903 of this Section:
  - (A) every date that each process unit or vessel is shut down, and
  - (B) the approximate vessel volatile organic compound concentration when the volatile organic compounds were first discharged to the atmosphere, and
  - (C) the approximate total quantity of volatile organic compounds emitted to the atmosphere.

New petroleum refineries shall submit such a procedure with the permit application.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

## SECTION .1100 - CONTROL OF TOXIC AIR POLLUTANTS

### .1109 CASE-BY-CASE MAXIMUM ACHIEVABLE CONTROL TECHNOLOGY

(a) Applicability. This Rule applies only to sources of hazardous air pollutants required to have a permit under 15A NCAC 2Q .0500.

(b) Effective. This Rule shall apply only after it and 15A NCAC 2Q .0500 have been approved by the EPA, except that the requirements of Paragraph (d) of this Rule shall not apply before May 15, 1994.

(c) Definitions. For the purposes of this Rule the following definitions apply:

- (1) "Control technology" means measures, processes, methods, systems, or techniques to limit the emission of hazardous air pollutants including measures that:
  - (A) reduce the quantity, or eliminate emissions, of such pollutants through process changes, substitution of materials, or other modifications;
  - (B) enclose systems or processes to eliminate emissions;
  - (C) collect, capture, or treat such pollutants when released from a process, stack, storage, or

(D) fugitive emission point:  
 (D) are design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in 42 USC 7412(h); or  
 (E) are a combination of Parts (A) through (D) of this definition.

(2) "Emission point" means any part or activity of a facility that emits or has the potential to emit, under current operational design, any hazardous air pollutants.

(3) (4) "EPA" means the United States Environmental Protection Agency or the Administrator of U.S. Environmental Protection Agency.

(4) "Existing facility" means a facility for which construction is commenced before EPA proposed a standard, applicable to the facility, under Section 112(d) or (h) of the federal Clean Air Act, or if no proposal was published, then on or before the Section 112(j) deadline.

(5) "Existing source" means a source, construction or reconstruction of which is commenced before EPA proposed a standard, applicable to the source, under Section 112(d) or (h) of the federal Clean Air Act, or if no proposal was published, then on or before the Section 112(j) deadline.

(6) (2) "Hazardous air pollutant" means any pollutant listed under Section 112(b) of the federal Clean Air Act.

(7) (3) "MACT" means maximum achievable control technology.

(8) (4) "Maximum achievable control technology" means:  
 (A) for existing sources,  
 (i) a MACT standard that EPA has proposed or promulgated for a particular category of facility or source,  
 (ii) the average emission limitation achieved by the best performing 12 percent of the existing facilities or sources for which EPA has emissions information if the particular category of source contains 30 or more sources, or  
 (iii) the average emission limitation achieved by the best performing five facilities or sources for which EPA has emissions information if the particular category of source contains fewer than 30 sources, or  
 (B) for new sources, the maximum degree of reduction in emissions that is deemed achievable but not less stringent than the emission control that is achieved in practice by the best controlled similar source.

(9) "MACT floor" means:  
 (A) for existing sources:  
 (i) the average emission limitation achieved by the best performing 12 percent of the existing sources in the United States (for which EPA has emissions information) excluding those sources that have, within 18 months before the emission standard is proposed or within 30 months before such standard is promulgated, whichever is later, first achieved a level of emission rate or emission reduction which complies, or would comply if the source is not subject to such standard, with the lowest achievable emission rate (as defined in Section 171 of the federal Clean Air Act) applicable to the source category or subcategory for categories and subcategories with 30 or more sources, or  
 (ii) the average emission limitation achieved by the best performing five sources in the United States (for which EPA has emissions or reasonably could obtain emission information) in the category or subcategory of sources with fewer than 30 sources;

(B) for new sources, the emission limitation achieved in practice by the best controlled similar source.

(10) (5) "Modification" means any physical change in, or change in the method of operation of, a facility which increases the actual emissions of any hazardous air pollutant emitted by that facility by more than a de minimis amount specified in 40 CFR Part 63 or which results in the emissions of any hazardous air pollutant not previously emitted by that facility by more than a de minimis amount specified in 40 CFR Part 63.

(11) "New facility" means a facility for which construction is commenced after the Section 112(j) deadline, or after proposal of a relevant standard under Section 112(d) or (h) of the federal Clean Air Act, whichever comes first.

(12) "New source" means a source for which construction or reconstruction is commenced after the Section 112(j) deadline, or after proposal of a relevant standard under Section 112(d) or (h) of the federal Clean Air Act, whichever comes first.

(13) "Section 112(j) deadline" means the date occurring 18 months after the scheduled promulgation date of a relevant standard under Section 112(e)(1) and (3) of the federal Clean Air Act. The applicable date for categories of sources is contained in the source category schedule for standards.

(14) "Similar source" means a source that has comparable emissions and is structurally similar in design and capacity to other sources such that

the source could be controlled using the same control technology.

(15) "United States" means the United States, their possessions and territories.

(d) Missed promulgation dates: 112(j). If EPA fails to promulgate a standard for a category of source under Section 112 of the federal Clean Air Act by the date established pursuant to Sections 112(e)(1) and or (3) of the federal Clean Air Act, the owner or operator of any source in such category shall submit, within 18 months after such date, a permit application, in accordance with the procedures in 15A NCAC 2Q .0526, to the Director to apply MACT to such sources. Sources subject to this Paragraph shall be in compliance with this Rule within three years from the date that the permit is issued.

(e) Modifications of existing facilities: 112(g). The owner or operator of an existing facility shall apply MACT to all sources in that facility that are modified or involved in a modification. MACT for new sources shall be applied to sources at an existing facility that is are constructed or reconstructed.

(f) New facilities. The owner or operator of any new facility shall apply MACT to the new facility before beginning construction and operation.

(g) Facilities subject to MACT because of increased emissions. If a facility becomes subject to the requirements of 15A NCAC 2Q .0500 because of increased emissions of hazardous air pollutants, the owner or operator of the facility shall submit a permit application in accordance with 15A NCAC 2Q .0526:

(1) If an existing facility becomes a major facility subject to the requirements of 15A NCAC 2Q .0500 by the addition of a source or as a result of reconstructing, that added source or reconstructed source shall comply with all requirements of this Rule that affect new sources and shall comply with new source MACT requirements before beginning operation.

(2) If a facility that is constructed after the applicable MACT requirements have been triggered under Paragraph (d) of this Rule, becomes subject to the requirements of 15A NCAC 2Q .0500 because of a relaxation of a federally enforceable emission limit on the capacity of a source to emit a hazardous air pollutant, then that source shall comply with new source MACT requirements before the date of the limit's relaxation.

(h) Case-by-case MACT determination. The owner or operator of the source shall determine MACT as follows:

(1) When EPA has proposed a relevant emission standard for the source category pursuant to Section 112(d) or 112(h) of the federal Clean Air Act, then the control technology proposed by the owner or operator of the source shall be capable of achieving all emission limitations and requirements of the proposed standard unless the

owner or operator provides with his permit application information adequate to support a contention that:

(A) different emission limitations represent the MACT emission limitations for the source category, or

(B) requirements different from those proposed by EPA will be effective in ensuring that MACT emissions limitations are achieved.

(2) When EPA or the Division of Environmental Management has issued guidance on establishing a MACT floor finding for the source category or subcategory, then the control technology proposed by the owner or operator of the source shall apply the recommended MACT emission limitation unless the owner or operator provides with his permit application information adequately supporting an amendment to such MACT floor.

(3) When neither EPA nor the Division of Environmental Management has issued guidance on establishing a MACT floor finding, then the owner or operator shall submit an application for a permit containing a proposed control technology that either achieves a level of control at least as stringent as the emission control that is achieved in practice by the best controlled similar source, or obtains at least the maximum reduction in emissions of hazardous air pollutants that is achievable considering costs, non-air quality health and environmental impacts, and energy requirements.

The owner or operator may select a specific design, equipment, work practice, or operational standard, or combination thereof, when it is not feasible to prescribe or enforce an equivalent emission limitation because of the nature of the process or pollutant. It is not feasible to prescribe or enforce a limitation when EPA determines that a hazardous air pollutant(s) cannot be emitted through a conveyance designed and constructed to capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any federal, State, or local law, or the application of measurement methodology to a particular class of sources is not practicable because of technology and economic limitations.

(i) Monitoring and recordkeeping. The owner or operator of a source subject to this Rule shall install, operate, and maintain monitoring capable of detecting deviations from each applicable emission limitation or other standards with sufficient reliability and timeliness to determine continuous compliance over the applicable reporting period. Such monitoring data may be used as a basis for enforcing emissions limitations established under this Rule.

Statutory Authority G.S. 143-215.3(a)(1);  
143-215.107(a)(5),(10).

## .1110 NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

(a) Sources emitting pollutants of the following types when subject to national emission standards for hazardous air pollutants promulgated in 40 CFR Part 61 shall comply with emission standards, monitoring and reporting requirements, maintenance requirements, notification and record keeping requirements, performance test requirements, test method and procedural provisions, and any other provisions, as required therein, rather than with any otherwise-applicable Rule in Section .0500 of this Subchapter which would be in conflict therewith. New sources of volatile organic compounds that are located in an area designated in 40 CFR 81.334 as nonattainment for ozone or in an area identified in accordance with 15A NCAC 2D .0902(c) as being in violation of the ambient air quality standard for ozone shall comply with the following requirements, as well as with any applicable requirements in Section .0900 of this Subchapter:

- (1) asbestos (40 CFR 61.01 to 61.19 and 61.140 to 61.159, Subpart M, with the exception named in 40 CFR 61.157);
- (2) beryllium (40 CFR 61.01 to 61.19 and 61.30 to 61.39, Subpart C);
- (3) beryllium from rocket motor firing (40 CFR 61.01 to 61.19 and 61.40 to 61.49, Subpart D);
- (4) mercury (40 CFR 61.01 to 61.19 and 61.50 to 61.59, Subpart E);
- (5) vinyl chloride (40 CFR 61.01 to 61.19 and 61.60 to 61.71, Subpart F);
- (6) equipment leaks (fugitive emission sources) of benzene (40 CFR 61.01 to 61.19 and 61.110 to 61.119, Subpart J);
- (7) equipment leaks (fugitive emission sources) (of volatile hazardous air pollutants) (40 CFR 61.01 to 61.19 and 61.240 to 61.249, Subpart V);
- (8) inorganic arsenic emissions from glass manufacturing plants (40 CFR 61.01 to 61.19 and 61.160 to 61.169, Subpart N);
- (9) inorganic arsenic emissions from primary copper smelters (40 CFR 61.01 to 61.19 and 61.170 to 61.179, Subpart O);
- (10) inorganic arsenic emissions from arsenic trioxide and metallic arsenic production facilities (40 CFR 61.01 to 61.19 and 61.180 to 61.186, Subpart P);
- (11) benzene emissions from benzene transfer operations (40 CFR 61.01 to 61.19 and 61.300 to 61.306, Subpart BB);
- (12) benzene waste operations (40 CFR 61.01 to 61.19 and 61.340 to 61.358, Subpart FF);
- (13) benzene emissions from coke by-product recovery plants (40 CFR 61.01 to 61.19 and 61.130 to 61.139, Subpart L); and
- (14) benzene emissions from benzene storage vessels (40 CFR 61.01 to 61.19 and 61.270 to 61.277 except 61.273, Subpart Y).

(b) All requests, reports, applications, submittals, and

other communications to the administrator required under Paragraph (a) of this Rule shall be submitted to the Director of the Division of Environmental Management rather than to the Environmental Protection Agency; except that all such reports, applications, submittals, and other communications to the administrator required by 40 CFR 61.145 shall be submitted to the Director, Division of Epidemiology.

(c) In the application of this Rule, definitions contained in 40 CFR Part 61 shall apply rather than those of Section .0100 of this Subchapter when conflict exists.

(d) 15A NCAC 2Q .0102 and .0302 are not applicable to any source to which this Rule applies. The owner or operator of the source shall apply for and receive a permit as required in 15A NCAC 2Q .0300 or .0500.

(e) The Code of Federal Regulations cited in this Rule are incorporated by reference and shall automatically include any later amendments thereto except for categories of sources not referenced in Paragraph (a) of this Rule. Categories of sources not referenced in Paragraph (a) of this Rule for which EPA has promulgated national emission standards for hazardous air pollutants in 40 CFR Part 61, if and when incorporated into this Rule, shall be incorporated using rule-making procedures.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107 (a)(5); 150B-21.6.

## .1111 MAXIMUM ACHIEVABLE CONTROL TECHNOLOGY

(a) With the exception of Paragraph (b) or (c) of this Rule, sources subject to national emission standards for hazardous air pollutants for source categories promulgated in 40 CFR Part 63 shall comply with emission standards, monitoring and reporting requirements, maintenance requirements, notification and record keeping requirements, performance test requirements, test method and procedural provisions, and any other provisions, as required therein, rather than with any otherwise-applicable Rule in Section .0500 of this Subchapter which would be in conflict therewith.

(b) The following are not included under this Rule:

- (1) approval of state programs and delegation of federal authorities (40 CFR 63.90 to 63.96, Subpart F); and
- (2) requirements for control technology determined for major sources in accordance with Clean Air Act Sections 112(g) and 112(i) (40 CFR 63.50 to 63.57, Subpart B).

(c) Along with the notice appearing in the North Carolina Register for a public hearing to amend this Rule to exclude a standard from this Rule, the Director shall state whether or not the national emission standard for hazardous air pollutants for source categories promulgated under 40 CFR Part 63, or part thereof, shall be enforced. If the Commission does not adopt the amendment to this Rule to exclude or amend the standard within 12 months after the close of the comment period on the proposed amendment, the

Director shall begin enforcing that standard when 12 months has elapsed after the end of the comment period on the proposed amendment.

(d) New sources of volatile organic compounds that are located in an area designated in 40 CFR 81.334 as nonattainment for ozone or an area identified in accordance with 15A NCAC 2D .0902(d) as being in violation of the ambient air quality standard for ozone shall comply with the requirements of 40 CFR Part 63 that are not excluded by this Rule as well as with any applicable requirements in Section .0900 of this Subchapter.

(e) All requests, reports, applications, submittals, and other communications to the administrator required under Paragraph (a) of this Rule shall be submitted to the Director of the Division of Environmental Management rather than to the Environmental Protection Agency.

(f) In the application of this Rule, definitions contained in 40 CFR Part 63 shall apply rather than those of Section .0100 of this Subchapter when conflict exists.

(g) 15A NCAC 2Q .0102 and .0302 are not applicable to any source to which this Rule applies. The owner or operator of the source shall apply for and receive a permit as required in 15A NCAC 2Q .0300 or .0500. Sources that have heretofore been exempted from needing a permit and become subject to requirements promulgated under 40 CFR 63 shall apply for a permit in accordance to 15A NCAC 2Q .0109.

Statutory Authority G.S. 143-213; 143-215.3(a)(1); 143-215.107 (a)(5); 150B-21.6.

## SECTION .1200 - CONTROL OF EMISSIONS FROM INCINERATORS

### .1202 DEFINITIONS

For the purposes of this Section, the following definitions apply:

- (1) "Control efficiency" means the mass of a pollutant in the waste fed to an incinerator minus the mass of that pollutant in the exit gas from the incinerator stack divided by the mass of the pollutant in the waste fed to the incinerator.
- (2) "Crematory incinerator" means any incinerator located at a crematory regulated under 21 NCAC 34C that is used solely for the cremation of human remains.
- (3) "Construction and demolition waste" means wood, paper, and other combustible waste resulting from construction and demolition projects except for hazardous waste and asphaltic material.
- (4) "Hazardous waste incinerator" means an incinerator regulated under 15A NCAC 13A .0001 through .0014, 40 CFR 264.340 to 264.351, Subpart O, or 265.340 to 265.352, Subpart O.
- (5) "Medical waste incinerator" means any incinerator regulated under Section 15A NCAC 13B .1207(3).
- (6) "Municipal solid waste incinerator" means an

incinerator as defined at 40 CFR 60.51a that burns municipal-type solid waste of which at least 95 percent by weight is generated off-site and that has a capacity of at least one ton per hour, except that boilers shall not be considered part of this definition.

- (7) "Municipal-type solid waste" means solid waste defined at 40 CFR 60.51a.
- (8) "POTW" means a publicly owned treatment works as defined in 40 CFR 501.2.
- (9) "Sewage sludge incinerator" means any incinerator regulated under 40 CFR Part 503, Subpart E.
- (10) "Sludge incinerator" means any incinerator regulated under Paragraph (a)(4) of Rule .0525 .1110 of this Subchapter but not under 40 CFR Part 503, Subpart E.
- (11) "Total hydrocarbons" means the organic compounds in the stack exit gas from a sewage sludge incinerator measured using a flame ionization detection instrument referenced to propane.

Statutory Authority G.S. 143-213; 143-215.3(a)(1).

### .1204 REPORTING AND RECORDKEEPING

(a) The reporting and recordkeeping requirements of Rule .1105 of this Subchapter shall apply to all incinerators in addition to any reporting and recordkeeping requirements that may be contained in any other rules.

(b) The owner or operator of an incinerator incinerator, except an incinerator used solely to cremate pets, shall maintain and operate a continuous temperature measuring and recording device for the primary chamber and, where there is a secondary chamber, for the secondary chamber. The owner or operator of an incinerator that has installed air pollution abatement equipment to reduce emissions of hydrogen chloride shall install, operate, and maintain continuous monitoring equipment to measure pH for wet scrubber systems and rate of alkaline injection for dry scrubber systems. The Director shall require the owner or operator of an incinerator with a permitted charge rate of 750 pounds per hour or more to install, operate, and maintain continuous monitors for oxygen or for carbon monoxide or both as necessary to determine proper operation of the incinerator. The Director may require the owner or operator of an incinerator with a permitted charge rate of less than 750 pounds per hour to install, operate, and maintain monitors for oxygen or for carbon monoxide or both as necessary to determine proper operation of the incinerator.

(c) In addition to the requirements of Paragraphs (a) and (b) of this Rule, the owner or operator of a sewage sludge incinerator shall:

- (1) install, operate, and maintain, for each incinerator, continuous emission monitors to determine the following:
  - (A) mercury emissions by use of Method 105 of 40 CFR Part 61, Appendix B, where applica-

ble to 40 CFR 61.55(a);

(B) total hydrocarbon concentration of the incinerator stack exit gas in accordance with 40 CFR 503.45(a) unless the requirements for continuously monitoring carbon monoxide as provided in 40 CFR 503.40(c) are satisfied;

(C) oxygen concentration of the incinerator stack exit gas; and

(D) moisture content of the incinerator stack exit gas;

(2) monitor the concentrations of beryllium and mercury from the sludge fed to the incinerator at least as frequently as required under Rule .0525 .1110 of this Subchapter but in no case less than once per year;

(3) monitor the concentrations of arsenic, cadmium, chromium, lead, and nickel in the sewage sludge fed to the incinerator at least as frequently as required under 40 CFR 503.46(a)(2) and (3);

(4) maintain records of all material required under Rule .1203 and .1204 of this Section in accordance with 40 CFR 503.47; and

(5) for class I sludge management facilities (as defined in 40 CFR 503.9), POTWs (as defined in 40 CFR 501.2) with a design flow rate equal to or greater than one million gallons per day, and POTWs that serve a population of 10,000 people or greater, submit the information recorded in Subparagraph (c)(4) of this Rule to the Director on or before February 19 of each year.

(d) All monitoring devices and systems required by this Rule shall be subject to a quality assurance program approved by the Director. Such quality assurance program shall include procedures and frequencies for calibration, standards traceability, operational checks, maintenance, auditing, data validation, and a schedule for implementing the quality assurance program.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(4),(5).

#### .1205 EMISSION STANDARDS

(a) The emission standards in this Rule apply to all incinerators except where Rule .0524 or .0525 .0524, .1110, or .1111 of this Subchapter applies except that Paragraphs (i) Subparagraphs (1), (2) and (4) of this Rule shall control in any event.

(b) Particulate matter. Hazardous waste incinerators shall comply with Subparagraph (3) of this Paragraph. Conical incinerators covered by Rule .0523 of this Subchapter shall comply with that Rule instead of this Paragraph. All other incinerators shall comply with one of the following emission standards for particulate matter:

(1) The emission of particulate matter from any stack or chimney of an incinerator shall not exceed:

	Refuse Charge In Lb/Hour	Allowable Emission Rate For Particulate Matter In Lb/Hour
0 to 100		0.2
200		0.4
500		1.0
1,000		2.0
2,000 and Above		4.0
	For a refuse charge between any two consecutive rates stated in the preceding table, the allowable emissions rate for particulate matter shall be calculated by the equation $E=0.002P$ . E=allowable emission rate for particulate matter in lb/hour. P=refuse charge in lb/hour.	
(2)	Instead of meeting the standards in Paragraph (b)(1) of this Rule, the owner or operator of an incinerator may choose to limit particulate emissions from the incinerator to 0.08 grains per dry standard cubic foot corrected to 12 percent carbon dioxide. In order to choose this option, the owner or operator of the incinerator shall demonstrate that the particulate ambient air quality standards will not be violated. To correct to 12 percent carbon dioxide, the measured concentration of particulate matter is multiplied by 12 and divided by the measured percent carbon dioxide.	
(3)	Hazardous waste incinerators shall meet the particulate matter requirements of 40 CFR 264.343(c).	
	(c) Sulfur dioxide. Incinerators shall comply with Rule .0516 of this Subchapter.	
	(d) Visible emissions. Incinerators shall comply with Rule .0521 of this Subchapter.	
	(e) Odorous emissions. Incinerators shall comply with Rule .0522 of this Subchapter.	
	(f) Hydrogen chloride. Except for hazardous waste incinerators, emissions of hydrogen chloride from an incinerator shall not exceed four pounds per hour unless it is reduced by at least 90 percent by weight or to no more than 50 parts per million by volume corrected to seven percent oxygen (dry basis). Hazardous waste incinerators shall meet the hydrogen chloride emissions requirements of 40 CFR 264.343(b).	
	(g) Mercury emissions. Mercury emissions from sludge incinerators and sewage sludge incinerators are regulated under 15A NCAC 2D .0525 .1110(a)(4) . Emissions of mercury and mercury compounds from the stack or chimney of a municipal solid waste incinerator shall not exceed 0.29 pounds per hour. Emissions of mercury and mercury compounds from the stack or chimney of a hazardous waste incinerator, medical waste incinerator, and any other type incinerator shall not exceed 0.032 pounds per hour.	
	(h) Beryllium Emissions. Beryllium emissions from sludge incinerators and sewage sludge incinerators shall comply with 15A NCAC 2D .0525 .1110(a)(2).	
	(i) Lead Emissions. The daily concentration of lead in	

sewage sludge fed to a sewage sludge incinerator shall meet the requirements specified in 40 CFR 503.43(c).

(j) Other Metal Emissions. The daily concentration of arsenic, cadmium, chromium, and nickel in sewage sludge fed to a sewage sludge incinerator shall meet the requirements specified in 40 CFR 503.43(d).

(k) The owner or operator of an incinerator shall demonstrate compliance with Section .1100 of this Subchapter in accordance with 15A NCAC 2H .0610.

(l) Ambient standards.

(1) In addition to the ambient air quality standards in Section .0400 of this Subchapter, the following ambient air quality standards, which are an annual average, in milligrams per cubic meter at 77° F (25° C) and 29.92 inches (760 mm) of mercury pressure shall apply aggregately to all incinerators at a facility:

(A) arsenic and compounds	$2.3 \times 10^{-7}$
(B) beryllium and compounds	$4.1 \times 10^{-6}$
(C) cadmium and compounds	$5.5 \times 10^{-6}$
(D) chromium (VI) and compounds	$8.3 \times 10^{-8}$

(2) When Subparagraph (1) of this Paragraph and either Rule ~~.0524 or .0525~~ .0524, .1110, or .1111 of this Subchapter regulate the same pollutant, the more restrictive provision for each pollutant shall apply, notwithstanding provisions of Rule ~~.0524 or .0525~~ .0524, .1110, or .1111 of this Subchapter to the contrary.

(3) The owner or operator of a facility with incinerators shall demonstrate compliance with the ambient standards in Parts (1)(A) through (D) of this Paragraph by following the procedures set out in Rule .1106 of this Subchapter. Modeling demonstrations shall comply with the requirements of Rule .0533 of this Subchapter.

(4) The emission rates computed or used under Subparagraph (3) of this Paragraph that demonstrate compliance with the ambient standards under Subparagraph (1) of this Paragraph shall be placed in the permit for the facility with incinerators as their allowable emission limits unless Rule ~~.0524 or .0525~~ .0524, .1110 or .1111 of this Subchapter requires more restrictive rates.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(3),(4),(5).

## .1206 OPERATIONAL STANDARDS

(a) The operational standards in this Rule do not apply to incinerators where operational standards in Rule ~~.0524 or .0525~~ .0524, .1110, or .1111 of this Subchapter apply.

(b) Hazardous waste incinerators. Hazardous waste incinerators shall comply with 15A NCAC 13A .0001 through .0014, which are administered and enforced by the Division of Solid Waste Management.

(c) Medical waste incinerators. Medical waste incinera-

tors shall meet the following requirements:

- (1) The primary chamber temperature shall be at least 1200°F.
- (2) The secondary chamber temperature shall be at least 1800°F.
- (3) Gases generated by the combustion shall be subjected to a minimum temperature of 1800°F for a period of not less than one second.

Medical waste incinerators shall comply with 15A NCAC 13B .1207(3) and any other pertinent parts of 15A NCAC 13B .1200, which are administered and enforced by the Division of Solid Waste Management.

(d) Municipal solid waste incinerators. Municipal solid waste incinerators shall meet the following requirements:

- (1) The concentration of carbon monoxide at the combustor outlet shall not exceed the concentration in Table 1 of Paragraph (a) of 40 CFR 60.36a. The incinerator technology named in this table is defined under 40 CFR 60.51a.
- (2) The temperature of the exhaust gas entering the particulate matter control device shall not exceed 450°F.
- (3) Gases generated by the combustion shall be subjected to a minimum temperature of 1800°F for a period of not less than one second.

(e) Sludge incinerators. The combustion temperature in a sludge incinerator shall not be less than 1200°F. The maximum oxygen content of the exit gas from a sludge incinerator stack shall be:

- (1) 12 percent (dry basis) for a multiple hearth sludge incinerator,
- (2) seven percent (dry basis) for a fluidized bed sludge incinerator,
- (3) nine percent (dry basis) for an electric sludge incinerator, and
- (4) 12 percent (dry basis) for a rotary kiln sludge incinerator.

(f) Sewage sludge incinerators.

- (1) The maximum combustion temperature for a sewage sludge incinerator shall be placed in the permit and based on information obtained during the performance test of the sewage sludge incinerator to determine pollutant control efficiencies.
- (2) The values for the operational parameters for the sewage sludge incinerator air pollution control device(s) shall be placed in the permit and be based on information obtained during the performance test of the sewage sludge incinerator to determine pollutant control efficiencies.
- (3) The monthly average concentration for total hydrocarbons, or carbon monoxide as provided in 40 CFR 503.40(c), in the exit gas from a sewage sludge incinerator stack, corrected to zero percent moisture and seven percent oxygen as specified in 40 CFR 503.44, shall not exceed 100 parts per million on a volumetric basis using the continuous emission monitor required in

Subparagraph .1204(c)(1) of this Subchapter.

(g) Crematory incinerators. Gases generated by the combustion shall be subjected to a minimum temperature of 1600°F for a period of not less than one second.

(h) Other incinerators. All incinerators not covered under Paragraphs (a) through (g) of this Rule shall meet the following requirement: Gases generated by the combustion shall be subjected to a minimum temperature of 1800°F for a period of not less than one second. The temperature of 1800°F shall be maintained at least 55 minutes out of each 60-minute period, but at no time shall the temperature go below 1600°F.

(i) Except during start-up where the procedure has been approved in accordance with Rule .0535(g) of this Subchapter, waste material shall not be loaded into any incinerators covered under Paragraphs (c), (d), (g), or (h) when the temperature is below the minimum required temperature. Start-up procedures may be determined on a case-by-case basis in accordance with Rule .0535(g) of this Subchapter. Incinerators covered under Paragraphs (c), (d), (g), and (h) shall have automatic auxiliary burners that are capable of maintaining the required minimum temperature in the secondary chamber excluding the heat content of the wastes.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

## SECTION .1900 - OPEN BURNING

### .1901 PURPOSE, SCOPE, AND IMPERMISSIBLE OPEN BURNING

(a) Purpose. The purpose of this Section is to control air pollution resulting from the open burning of combustible materials.

(b) Scope. This Section applies to all operations involving open burning. This Section does not authorize any open burning which is a crime under G.S. 14-136 through G.S. 14-140.1, or affect the authority of the Division of Forest Resources to issue or deny permits for open burning in or adjacent to woodlands as provided in G.S. 113-60.21 through G.S. 113-60.31. This Section does not affect the authority of any local government to regulate open burning through its fire codes or other ordinances. The issuance of any open burning permit by the Division of Forest Resources or any local government does not relieve any person from the necessity of complying with this Section or any other air quality rule.

(c) Impermissible Open Burning. A person shall not cause, allow, or permit open burning of combustible material except as allowed by Rule .1903 of this Section or as covered by a permit issued under Rule .1904 of this Section.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

### .1902 DEFINITIONS

For the purpose of this Section, the following definitions apply:

- (1) "AHMB" means the Asbestos Hazard Management Branch of the Division of Epidemiology.
- (2) "Air Curtain Burner" means a stationary or portable combustion device that directs a plane of high velocity forced draft air through a manifold head into a pit with vertical walls in such a manner as to maintain a curtain of air over the surface of the pit and a recirculating motion of air under the curtain.
- (3) "Dangerous materials" means explosives or containers used in the holding or transporting of explosives.
- (4) "Land clearing" means the uprooting or clearing of vegetation in connection with construction for buildings; right-of-way; agricultural, residential, commercial, or industrial development; or the initial clearing of vegetation to enhance property value; but does not include routine maintenance or property clean-up activities.
- (5) "Log" means any limb or trunk whose diameter exceeds six inches.
- (6) "Nuisance" means causing physical irritation exacerbating a documented medical condition, visibility impairment, or evidence of soot or ash on property or structure other than the property on which the burning is done.
- (7) "Open burning" means the burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the atmosphere without passing through a stack, chimney, or a permitted air pollution control device.
- (8) "Person" as used in 2D .1901(c), means:
  - (a) the person in operational control over the open burning, or
  - (b) the landowner or person in possession or control of the land when he has directly or indirectly allowed the open burning or has benefited from it.
- (9) "Public pick-up" means the removal of refuse, yard trimmings, limbs, or other plant material from a residence by a governmental agency or municipal service.
- (10) "Public road" means any road that is part of the State highway system; or any road, street, or right-of-way dedicated or maintained for public use.
- (11) "RACM" means regulated asbestos containing material as defined in 40 CFR 61.142.
- (12) "Refuse" means any garbage, rubbish, or trade waste.
- (13) "Regional Office Supervisor" means the supervisor of personnel of the Division of Environmental Management in a regional office of the Department of Environment, Health and Natural Re-

sources.

(14) "Salvageable items" means any product or material that was first discarded or damaged and then all, or part, was saved for future use, and include insulated wire, electric motors, and electric transformers.

(15) "Synthetic material" means man-made material, including tires, asphalt materials such as shingles or asphaltic roofing materials, construction materials, packaging for construction materials, wire, electrical insulation, and treated or coated wood.

Statutory Authority G.S. 143-215.3(a)(1); 143-212; 143-213.

#### .1903 PERMISSIBLE OPEN BURNING WITHOUT A PERMIT

(a) All open burning is prohibited except open burning allowed under Paragraph (b) of this Rule or Rule .1904 of this Section.

(b) The following types of open burning are permissible without a permit:

(1) open burning of leaves, tree branches or yard trimmings, excluding logs and stumps, if the following conditions are met:

(A) The material burned originates on the premises of private residences and is burned on those premises;

(B) There are no public pickup services available;

(C) Non-vegetative materials, such as household garbage or other man-made materials are not burned;

(D) The burning is started no earlier than 8:00 a.m. and no additional combustible material is added to the fire between 6:00 p.m. on one day and 8:00 a.m. on the following day;

(E) The burning does not create a nuisance; and

(F) Material is not burned when the Division of Forest Resources has banned burning for that area;

(2) open burning for land clearing or right-of-way maintenance if the following conditions are met:

(A) Prevailing winds at the time of burning are away from any area which may be significantly affected by smoke, ash, or other air pollutants from the burning;

(B) The location of the burning is at least 1,000 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other structure not located on the property on which the burning is conducted and at least 250 feet from any public road as measured from the edge of the pavement or other roadway surface, closest to the burning. The regional office supervisor may grant exceptions to the setback requirements if:

(i) a signed, written statement waiving objections to the open burning associated with

the land clearing operation is obtained before the open burning begins from all residents or owners of dwellings, commercial or institutional establishments, or other structures within 1,000 feet of the open burning site, or

(ii) an air curtain burner as described in Rule .0904 of this Section, is utilized at the open burning site;

(C) Heavy oils, asphaltic materials such as shingles and other roofing materials, items containing natural or synthetic rubber, or any materials other than plant growth are not burned. However, kerosene, distillate oil, or diesel fuel may be used to start the fire;

(D) Initial burning begins only between the hours of 8:00 a.m. and 6:00 p.m., and no combustible material is added to the fire between 6:00 p.m. on one day and 8:00 a.m. on the following day, except that, under favorable meteorological conditions, deviation from these hours of burning may be granted by the regional office supervisor. The owner or operator of the open burning operation shall be responsible for obtaining written approval for burning during periods other than those specified in this Part; and

(E) No fires are started or vegetation is added to existing fires when the Division of Forest Resources has banned burning for that area. Debris from land clearing or right-of-way maintenance may be carried off-site for open burning to facilities permitted in accordance with Rule .0904 of this Section for the operation of an air curtain burner. However, no material may be taken off-site for open burning in areas where a permitted air curtain burner is not available;

(3) camp fires and fires used solely for outdoor cooking and other recreational purposes, or for ceremonial occasions, or for human warmth and comfort and which do not create a nuisance and do not use synthetic materials or refuse or salvageable materials for fuel;

(4) fires purposely set to forest lands for forest management practices acceptable to the Division of Forest Resources;

(5) fires purposely set to agricultural lands for disease and pest control and fires set for other agricultural or apicultural practices acceptable to the Department of Agriculture;

(6) fires purposely set for wildlife management practices acceptable to the Wildlife Management Commission;

(7) fires for the disposal of dangerous materials where there is no alternative method of disposal; fires for the disposal of material generated as a result of a natural disaster, such as tornado,

hurricane, or flood if the regional office supervisor grants permission for the burning. The person desiring to do the burning shall document to the regional office supervisor of the appropriate regional office that there is no other practical method of disposal of the waste. Factors that the regional office supervisor shall consider in granting permission for the burning include type, amount, and nature of combustible substances. The regional office supervisor shall not grant permission for the burning if the primary purpose of the fire is to dispose of synthetic materials or refuse or recovery of salvageable materials. Fires authorized under this Subparagraph shall comply with the conditions of Subparagraph (b)(2) of this Rule;

(9) fires purposely set by manufacturers of fire extinguishing materials or equipment, testing laboratories, or other persons, for the purpose of testing or developing these materials or equipment in accordance with a valid standard qualification program;

(10) fires purposely set for the instruction and training of fire-fighting personnel, including fires at permanent fire-fighting training facilities, or when conducted under the supervision of:

- (A) the Division of Forest Resources,
- (B) the North Carolina Insurance Department,
- (C) North Carolina technical institutes, or
- (D) North Carolina community colleges, including:
  - (i) the North Carolina Fire College, or
  - (ii) the North Carolina Rescue College, which are conducted with the cooperation of one or both of these agencies; and

(11) fires not described in Subparagraph (10) of this Paragraph, purposely set for the instruction and training of fire-fighting personnel, provided that:

- (A) The regional office supervisor of the appropriate regional office and the AHMB have been notified according to the procedures and deadlines contained in the appropriate regional notification form. This form may be obtained by writing the appropriate regional office at the address in Rule .1905 of this Section and requesting it, and
- (B) The regional office supervisor has granted permission for the burning. Factors that the regional office supervisor shall consider in granting permission for the burning include type, amount, and nature of combustible substances. The regional office supervisor shall not grant permission for the burning of salvageable items, such as insulated wire and electric motors or if the primary purpose of the fire is to dispose of synthetic materials or refuse. The regional office supervisor of the appropriate regional office shall not consider

previously demolished structures as having training value. However, the regional office supervisor of the appropriate regional office may allow an exercise involving the burning of motor vehicles burned over a period of time by a training unit or by several related training units. Any deviations from the dates and times of exercises, including additions, postponements, and deletions, submitted in the schedule in the approved plan shall be communicated verbally to the regional office supervisor of the appropriate regional office at least one hour before the burn is scheduled.

(c) The authority to conduct open burning under this Section does not exempt or excuse any person from the consequences, damages or injuries which may result from this conduct. It does not excuse or exempt any person from complying with all applicable laws, ordinances, rules or orders of any other governmental entity having jurisdiction even though the open burning is conducted in compliance with this Section.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5).

#### .1904 AIR CURTAIN BURNERS

(a) Air permits shall not be required for air curtain burners located at temporary land clearing or right-of-way maintenance sites for less than nine months. However, air permits shall be required for air curtain burners located at permanent sites or where materials are transported in from another site.

(b) Air curtain burners described in Paragraph (a) of this Rule shall comply with the following conditions and stipulations:

- (1) Prevailing winds at the time of burning shall be away from any area which may be significantly affected by smoke, ash, or other air pollutants from the burning;
- (2) Only collected land clearing and yard waste materials may be burned. Heavy oils, asphaltic materials, items containing natural or synthetic rubber, tires, grass clippings, collected leaves, paper products, plastics, general trash, garbage, or any materials containing painted or treated wood materials shall not be burned. Leaves still on trees or brush may be burned;
- (3) No fires shall be started or material added to existing fires when the Division of Forest Resources has banned burning for that area;
- (4) Burning shall be conducted only between the hours of 8:00 a.m. and 6:00 p.m.;
- (5) The air curtain burner shall not be operated more than the maximum source operating hours-per-day and days-per-week. The maximum source operating hours-per-day and days-per-week shall be set to protect the ambient air

quality standard and prevention of significant deterioration (PSD) increment for particulate. If the air curtain burner will:

(A) burn 35 tons of material per day or more in an area where the particulate baseline date for the PSD has been triggered, or

(B) burn 210 tons of material per day or more in an area where the particulate baseline date for PSD has not been triggered, the maximum source operating hours-per-day and days-per-week shall be determined using the modeling procedures in Rule .1106(b),(c), and (f) of this Chapter. This Subparagraph shall not apply to temporary air curtain burners;

(6) Operators of the air curtain burner shall be certified to read visible emissions and the facility shall be tested for visible emissions within 90 days after initial operation and within 90 days of permit expiration;

(7) Air curtain burners shall meet manufacturers specifications for operation and upkeep to ensure complete burning of material charged into the pit. Manufacturers specifications shall be kept on site and be available for inspection by Division staff;

(8) Except during start-up, visible emissions shall not exceed five percent opacity when averaged over a six-minute period except that one six-minute period with an average opacity of more than five percent but no more than 35 percent shall be allowed for any one-hour period. During start-up, the visible emissions shall not exceed 35 percent opacity when averaged over a six-minute period. Start-up shall not last for more than 30 minutes, and there shall be no more than one start-up per day;

(9) The owner or operator of an air curtain burner shall not allow ash to build up in the pit to a depth higher than one-third of the depth of the pit or to the point where the ash begins to impede combustion, whichever occurs first. The owner or operator of an air curtain burner shall water the ash prior to its removal to prevent the ash from becoming airborne;

(10) The owner or operator of an air curtain burner shall not load material into the air curtain burner such that it will protrude above the air curtain;

(11) Only distillate oil, kerosene, diesel fuel, natural gas, or liquefied petroleum gas may be used to start the fire; and

(12) The location of the burning at temporary sites shall be at least 500 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other structure not located on the property on which the burning is conducted and 100 feet from any public road measured from the nearest edge of the pavement

or other roadway surface. Compliance with this Rule does not relieve any owner or operator of an air curtain burner from the necessity of complying with other rules in this Section or any other air quality rules.

(c) Recordkeeping Requirements. The owner or operator of an air curtain burner at a permanent site shall keep a daily log of specific materials burned and amounts of material burned in pounds per hour and tons per year. The owner or operator of an air curtain burner at a temporary site shall keep a log of total number of tons burned per temporary site.

(d) Title V Considerations. Burners that have the potential to burn 15,000 tons of material or more per year may be subject to Section 15A NCAC 2Q .0500, Title V Procedures.

(e) Prevention of Significant Deterioration Consideration. Burners that burn 38,000 tons per year or more may be subject to 15A NCAC 2D .0530, Prevention of Significant Deterioration.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 143-215.66; 143-215.108.

#### .1905 REGIONAL OFFICE LOCATIONS

Inquiries, requests and plans shall be handled by the appropriate Department of Environmental, Health, and Natural Resources regional offices. They are:

- (1) Asheville Regional Office, Interchange Building, 59 Woodfin Place, Asheville, North Carolina 28801;
- (2) Winston-Salem Regional Office, 585 Waughtown Street, Winston-Salem, North Carolina 27107;
- (3) Mooresville Regional Office, 919 North Main Street, Mooresville, North Carolina 28115;
- (4) Raleigh Regional Office, 3800 Barrett Drive, Raleigh, North Carolina 27611;
- (5) Fayetteville Regional Office, Wachovia Building, Suite 714, Fayetteville, North Carolina 28301;
- (6) Washington Regional Office, 1424 Carolina Avenue, Farish Building, Washington, North Carolina 27889; and
- (7) Wilmington Regional Office, 127 Cardinal Drive Extension, Wilmington, North Carolina 28405.

Statutory Authority G.S. 143-215.3(a)(1).

#### .1906 DELEGATION TO COUNTY GOVERNMENTS

The Director may upon request by a county government enter into an agreement on a case-by-case basis with that county government to allow that county government to implement and enforce this Section. The Director shall not delegate authority to a county government for the permitting of an air curtain burner at a permanent site as defined in Rule .1904 of this Section.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.112.

**SUBCHAPTER 2H - PROCEDURES FOR PERMITS:  
APPROVALS**

**SECTION .0600 - AIR QUALITY PERMITS**

**.0610 PERMIT REQUIREMENTS FOR TOXIC  
AIR POLLUTANTS**

(a) Definitions. For the purposes of this Rule, the following definitions apply:

- (1) "Actual emissions" means the average rate at which the source actually emitted the pollutant during a two-year period that preceded the date of the application for the modification and that is representative of normal operation of the source.
- (2) "Creditable emissions" means actual decreased emissions that have not been previously relied on to comply with 15A NCAC 2D. All creditable emissions shall be enforceable by permit condition.
- (3) "Evaluation" means a determination of ambient air concentrations as described under 15A NCAC 2D .1106 and shall include emissions from sources exempted by Paragraph (g) of this Rule.
- (4) "Existing facility" means any facility that was permitted to construct or was in operation before October 1, 1993.
- (5) "Incinerator" means any device subject to requirements of 15A NCAC 2D .1200.
- (6) "MACT" means any maximum achievable control technology emission standard applied to a source or facility pursuant to Title III of the 1990 federal Clean Air Act Amendments.
- (7) "Maximum feasible control" means the maximum degree of reduction for each pollutant subject to regulation in this Rule using the best technology that is available taking into account, on a case-by-case basis, energy, environmental, and economic impacts and other costs.
- (8) "Modification" means any physical change or change that results in a net increase in emissions or ambient concentration of any pollutant listed in Paragraph (h) of this Rule or which results in the emission of any pollutant listed in Paragraph (h) of this Rule not previously emitted.
- (9) "Net increase in emissions" means the amount by which the sum of the following exceeds zero:
  - (A) any increase in emissions from a particular physical change or change in the method of operation at the facility; and
  - (B) any other increases and decreases in emissions at the facility within five years immediately preceding the filing of an air permit application for the modification that are otherwise creditable emissions.
- (10) "Unadulterated wood" means wood that is not

painted, varnished, stained, oiled, waxed, or otherwise coated or treated with any chemical. Plywood, particle board, and resinated wood are not unadulterated wood.

(b) Applicability. Except as provided in Paragraph (g) or (h) of this Rule, no person shall cause or allow any toxic air pollutant named in 15A NCAC 2D .1104 to be emitted into the atmosphere from any source without having received a permit from the Commission commission in accordance with the following:

- (1) New Facilities. Any facility that begins construction after September 30, 1993, and that:
  - (A) is required to have a permit because of applicability of Sections in Subchapter 2D of this Chapter other than Section .1100 of this Subchapter, except for facilities whose emissions of toxic air pollutants result only from combusting unadulterated fossil fuels or unadulterated wood and associated storage of such fuels; or
  - (B) has a standard industrial classification (SIC) code that has previously been called under Subparagraph (b)(3) of this Rule; shall comply with Section .1100 of this Subchapter before beginning construction or operation, shall have received a permit to emit toxic air pollutants before beginning construction and shall comply with such permit when beginning operation.
- (2) Facilities with Incinerators. The owner or operator of any incinerator subject to 15A NCAC 2D .1200 which began construction or was in operation before October 1, 1991, shall apply for a permit or a permit modification to emit toxic air pollutants from the incinerator, including associated waste handling and storage, in accordance with the compliance schedules contained in 15A NCAC 2D .1209. The owner or operator of the incinerator shall apply for a permit or a permit modification to emit toxic air pollutants from all other sources at that facility in accordance with Subparagraphs (b)(3) through (6) of this Rule.
- (3) SIC Calls for Existing Facilities. The owner or operator of an existing facility shall have 180 days to apply for a permit or permit modification for the emissions of toxic air pollutants after receiving written notification from the Director. Such facilities shall comply with 15A NCAC 2D .1100 as follows:
  - (A) If it is not known that the source is, or will be, subject to a MACT at the time of notification, the source shall comply:
    - (i) within three years from the date that the permit is issued if the source does not emit any toxic air pollutant in common with any source at the facility subject to MACT, or

(ii) in accordance with Subparagraph (b)(4) of this Rule if the source emits a toxic air pollutant in common with any source at the facility subject to MACT.

(B) If it is known that the source is, or will be, subject to a MACT at the time of notification, the source shall comply in accordance with Subparagraph (b)(4) of this Rule.

The Director shall notify facilities subject to this Subparagraph by calling for permit applications on the basis of standard industrial classifications, that is, he shall call at one time for permits for all facilities statewide that have the same four-digit standard industrial classification code, except those facilities located in certified local air pollution control agency areas. (Local air pollution control agencies shall call the standard industrial classification code within their jurisdiction when the Director calls that code. A local air pollution control agency may call a particular standard industrial classification code before the Director calls that code if the Commission approves the call by the local air pollution control agency.) All sources, regardless of their standard industrial classification code and including sources combusting only unadulterated fossil fuels or unadulterated wood, at the facility shall be included in the call for permit applications. All members of a source or facility category not having a standard industrial classification code shall similarly be called at one time. For categories of sources, excluding cooling towers, for which it is known that the Environmental Protection Agency (EPA) has scheduled promulgation of a MACT under Section 112(e) of the federal Clean Air Act, the Director shall notify facilities in these categories as the EPA promulgates MACT. If the EPA fails to promulgate a MACT as scheduled after it has approved the State's Title V permit program, the Director shall notify facilities 18 months after the missed promulgation date.

(4) Existing Facilities Subject to MACT. The owner or operator of an existing facility subject to one or more MACT, or that may be subject to a MACT based on studies required by Section 112(n)(1) of the Clean Air Act, 42 U.S.C. Section 7412(n)(1), shall submit a permit application to comply with Section .1100 of this Subchapter at the same time that he submits a permit application to comply with the last MACT that is known to apply to the facility. The permit application shall include an evaluation for all toxic air pollutants covered under 15A NCAC 2D .1104 for all sources at the facility. The facility shall comply with the requirements of 15A NCAC 2D .1100 by the

(5) same deadline that it is required to comply with the last MACT.

Modification. For modification of a facility undertaken after August 31, 1993, that is required to have a permit because of applicability of Sections in Subchapter 2D of this Chapter other than Section .1100 of this Subchapter, except for facilities whose emissions of toxic air pollutants result only from combusting unadulterated fossil fuels or unadulterated wood and associated storage of such fuels or that has a standard industrial classification (SIC) code that has previously been called under Subparagraph (b)(3) of this Rule, the owner or operator of the facility shall submit a permit application to comply with 15A NCAC 2D .1100 if:

(A) The modification results in:

- (i) a net increase in emissions of any toxic air pollutant that the facility was emitting before the modification, or
- (ii) emissions of any toxic air pollutant that the facility was not emitting before the modification if such emissions exceed any level contained in Paragraph (h) of this Rule; or

(B) The Director finds that the modification of the facility will significantly increase the risk to human health posed by the facility. The Director shall provide his findings to the owner or operator of the facility. The Director may require the owner or operator of a facility subject to this Subparagraph to provide a satisfactory analysis showing what the resultant emissions and increase of risk to human health from the modified facility will be.

The permit application filed pursuant to Part (A) of this Subparagraph shall include an evaluation for all toxic air pollutants covered under 15A NCAC 2D .1104 for which there is a net increase in emissions of toxic air pollutants being emitted before the modification or an increase in emissions of toxic air pollutants above the level in Paragraph (h) of this Rule of toxic air pollutants not being emitted before the modifications. All sources at the facility emitting these toxic air pollutants shall be included in the evaluation. The permit application filed pursuant to Part (B) of this Subparagraph shall include an evaluation for all toxic air pollutants identified by the Director as significantly increasing the risk to human health.

(6) Previously Permitted Facilities.

(A) A facility that received a permit to emit toxic air pollutants before October 1, 1993, shall continue to operate under the terms of such permit. The emissions of toxic air pollutants resulting from modification of the facility will be regulated pursuant to Subparagraph (b)(5)

of this Rule.

(B) A facility that has received a permit to emit toxic air pollutants before October 1, 1993, that is operating under a compliance schedule previously approved by the Director, and that will be subject to a MACT shall be required to comply with the terms of such compliance schedule unless the owner or operator of the facility demonstrates to the satisfaction of the Director that compliance requires substantial capital expenditures that may be rendered unnecessary when MACT is applied. Where such a demonstration is made, the owner or operator of the facility shall submit a permit application to comply with 15A NCAC 2D .1100 in accordance with Subparagraphs (b)(3), (4), or (5) of this Rule.

(c) **Demonstrations.** The owner or operator of a source who is applying for a permit or permit modification to emit toxic air pollutants shall:

- (1) demonstrate to the satisfaction of the Director through dispersion modeling that the emissions of toxic air pollutants from the facility will not cause any acceptable ambient level listed in 15A NCAC 2D .1104 to be exceeded; or
- (2) demonstrate to the satisfaction of the Commission or its delegate that the ambient concentration beyond the premises (contiguous and adjacent property boundary) for the subject toxic air pollutant will not adversely affect human health even though the concentration is higher than the acceptable ambient level in 15A NCAC 2D .1104 by providing one of the following demonstrations:
  - (A) the area where the ambient concentrations are expected to exceed the acceptable ambient levels in 15A NCAC 2D .1104 are not inhabitable or occupied for the duration of the averaging time of the pollutant of concern, or
  - (B) new toxicological data that shows that the acceptable ambient level in 15A NCAC 2D .1104 for the pollutant of concern is too low and the facility's ambient impact is below the level indicated by the toxicological data.

(d) **Technical Infeasibility and Economic Hardship.** This Paragraph shall not apply to any incinerator covered under 15A NCAC 2D .1200. The owner or operator of any source constructed before May 1, 1990, who cannot supply a demonstration described in Paragraph (c) of this Rule shall:

- (1) demonstrate to the satisfaction of the Commission or its delegate that complying with the guidelines in 15A NCAC 2D .1104 is technically infeasible (the technology necessary to reduce emissions to a level to prevent the acceptable ambient levels in 15A NCAC 2D .1104 from being exceeded does not exist); or

(2) demonstrate to the satisfaction of the Commission or its delegate that complying with the guidelines in 15A NCAC 2D .1104 would result in serious economic hardship.

If the owner or operator makes a demonstration to the satisfaction of the Commission or its delegate pursuant to Subparagraph (1) or (2) of this Paragraph, the Director shall require the owner or operator of the source to apply maximum feasible control. Maximum feasible control shall be in place and operating within three years from the date that the permit is issued for the maximum feasible control.

(e) **Public Notice and Opportunity for Public Hearing.** If the owner or operator of a source chooses to make a demonstration pursuant to Subparagraph (c)(2) or (d)(1) or (2) of this Rule, the Commission or its delegate shall approve or disapprove the permit after a public notice with an opportunity for a public hearing. The public notice shall meet the requirements of Paragraph ~~(d) of Rule .0603 of this Section~~ ~~(c) of 15A NCAC 2Q .0307~~. Any subsequent public hearing shall meet the requirements of Paragraph (e) of ~~15A NCAC 2Q .0307~~. ~~Rule .0603 of this Section except that the permit, if approved, shall not become part of the North Carolina State Implementation Plan for Air Quality.~~

(f) **Modeling Demonstration.** If the owner or operator of a facility demonstrates by modeling that any toxic air pollutant emitted from his facility contributes an incremental concentration to the ambient air concentration of that pollutant beyond his premises which is less than the acceptable ambient level values given in 15A NCAC 2D .1104, he does not have to provide any further modeling demonstration with his permit application. However, the Commission may still require more stringent emission levels in accordance with its analysis under 15A NCAC 2D .1107.

(g) **Exemptions.** A permit to emit toxic air pollutants shall not be required for:

- (1) the noncommercial use of household cleaners, household chemicals, or household fuels in private residences;
- (2) asbestos demolition and renovation projects that comply with 15A NCAC 2D ~~.0525~~ .1110 and that are being done by persons accredited by the Department of Environment, Health, and Natural Resources under the Asbestos Hazard Emergency Response Act;
- (3) emissions from gasoline dispensing facility or gasoline service station operations performed as a part of petroleum distribution to the ultimate consumer where the emissions comply with 15A NCAC 2D .0524, .0925, .0928, .0932 and .0933 and that receive gasoline from bulk gasoline plants or bulk gasoline terminals that comply with 15A NCAC 2D .0524, .0925, .0926, .0927, .0932, and .0933 via tank trucks that comply with 15A NCAC 2D .0932;
- (4) the use for agricultural operations by a farmer of fertilizers, pesticides, or other agricultural chemicals containing one or more of the com-

pounds listed in 15A NCAC 2D .1104 if such compounds are applied in accordance with agronomic practices acceptable to the North Carolina Department of Agriculture and the Commission;

(5) manholes and customer vents of wastewater collection systems;

(6) emissions of ethylene oxide resulting from use as a sterilant in the production and subsequent storage of medical devices or the packaging and subsequent storage of medical devices for sale provided that the emissions from all new and existing sources located at the facility described in Paragraph (d) of 15A NCAC 2D .0538 are controlled at least to the degree described in Paragraph (d) of 15A NCAC 2D .0538 and the facility complies with Paragraphs (e) and (f) of 15A NCAC 2D .0538;

(7) emissions from bulk gasoline plants, including emissions from the storage and handling of fuel oils, kerosenes, and jet fuels but excluding emissions from the storage and handling of other organic liquids, that comply with 15A NCAC 2D .0524, .0925, .0926, .0932, and .0933 unless the Director finds that a permit to emit toxic air pollutants is required under this Rule for a particular bulk gasoline plant;

(8) emissions from bulk gasoline terminals, including emissions from the storage and handling of fuel oils, kerosenes, and jet fuels but excluding emissions from the storage and handling of other organic liquids, that comply with 15A NCAC 2D .0524, .0925, .0927, .0932, and .0933 if the bulk gasoline terminal existed before November 1, 1992, unless:

(A) the Director finds that a permit to emit toxic air pollutants is required under this Rule for a particular bulk gasoline terminal, or

(B) the owner or operator of the bulk gasoline terminal meets the requirements of 15A NCAC 2D .0927(i).

(h) Emissions Rates Requiring a Permit. A permit to emit toxic air pollutants shall be required for any facility whose actual emissions from all sources are greater than any one of the following:

	lb/yr	lb/day	lb/hr	lb/15 min.
(1) acetaldehyde				1.7
(2) acetic acid				0.24
(3) acrolein				0.005
(4) acrylonitrile	10			
(5) ammonia				0.17
(6) ammonium chromed		0.013		
(7) ammonium dichromate		0.013		
(8) aniline			0.25	
(9) arsenic and inorganic arsenic compounds	0.016			
(10) asbestos	1.9x10 <sup>-6</sup>			
(11) aziridine		0.13		
(12) benzene	8.1			
(13) benzidine and salts	0.0010			
(14) benzo(a)pyrene	2.2			
(15) benzyl chloride			0.13	
(16) beryllium	0.28			
(17) beryllium chloride	0.28			
(18) beryllium fluoride	0.28			
(19) beryllium nitrate	0.28			
(20) bis-chloromethyl ether	0.025			
(21) bromine				0.013
(22) 1,3-butadiene	12			

**PROPOSED RULES**

(23)	cadmium	0.37		
(24)	cadmium acetate	0.37		
(25)	cadmium bromide	0.37		
(26)	calcium chromed	0.0056		
(27)	carbon disulfide		3.9	
(28)	carbon tetrachloride	460		
(29)	chlorine		0.79	0.057
(30)	chlorobenzene		46	
(31)	chloroform	290		
(32)	chloroprene		9.2	0.89
(33)	chromic acid		0.013	
(34)	chromium (VI)	0.0056		
(35)	cresol			0.56
(36)	p-dichlorobenzene			4.2
(37)	dichlorodifluoromethane		5200	
(38)	dichlorofluoromethane	10		
(39)	di(2-ethylhexyl) phthalate		0.63	
(40)	dimethyl sulfate		0.063	
(41)	1,4-dioxane		12	
(42)	epichlorohydrin	5600		
(43)	ethyl acetate			36
(44)	ethylenediamine		6.3	0.64
(45)	ethylene dibromide	27		
(46)	ethylene dichloride	260		
(47)	ethylene glycol monoethyl ether		2.5	0.48
(48)	ethylene oxide	1.8		
(49)	ethyl mercaptan			0.025
(50)	fluorides		0.34	0.064
(51)	formaldehyde			0.010
(52)	hexachlorocyclo- pentadiene		0.013	0.0025
(53)	hexachlorodibenzo- p-dioxin	0.0051		
(54)	n-hexane		23	
(55)	hexane isomers except n-hexane			23
(56)	hydrazine		0.013	
(57)	hydrogen chloride			0.045
(58)	hydrogen cyanide		2.9	0.28
(59)	hydrogen fluoride		0.63	0.016
(60)	hydrogen sulfide			0.13
(61)	maleic anhydride		0.25	0.025
(62)	manganese and compounds		0.63	
(63)	manganese cyclopentadienyl tricarbonyl		0.013	
(64)	manganese tetroxide		0.13	
(65)	mercury, alkyl		0.0013	
(66)	mercury, aryl and inorganic compounds		0.013	
(67)	mercury, vapor		0.013	
(68)	methyl chloroform		250	16
(69)	methylene chloride	1600		
(70)	methyl ethyl ketone		78	5.6
(71)	methyl isobutyl ketone	52		1.9

(72)	methyl mercaptan		0.013
(73)	nickel carbonyl	0.013	
(74)	nickel metal	0.13	
(75)	nickel, soluble compounds, as nickel	0.013	
(76)	nickel subsulfide	0.14	
(77)	nitric acid		0.064
(78)	nitrobenzene	1.3	0.13
(79)	N-nitrosodimethylamine	3.4	
(80)	pentachlorophenol	0.063	0.0064
(81)	perchloroethylene	13,000	
(82)	phenol		0.24
(83)	phosgene	0.052	
(84)	phosphine		0.008
(85)	polychlorinated biphenyls	5.6	
(86)	potassium chromate		0.013
(87)	potassium dichromate	0.013	
(88)	sodium chromate		0.013
(89)	sodium dichromate		0.013
(90)	strontium chromate	0.0056	
(91)	styrene		2.7
(92)	sulfuric acid	0.25	0.025
(93)	tetrachlorodibenzo- p-dioxin	0.00020	
(94)	1,1,1,2-tetrachloro- 2,2-difluoroethane		1100
(95)	1,1,2,2-tetrachloro- 1,2-difluoroethane		1100
(96)	1,1,1,2-tetrachloro- ethane	430	
(97)	toluene	98	3.6
(98)	toluene-2,4-diisocyanate		0.001
(99)	trichloroethylene	4000	
(100)	trichlorofluoromethane		140
(101)	1,1,2-trichloro- 1,2,2-trifluoroethane		60
(102)	vinyl chloride	26	
(103)	vinylidene chloride		2.5
(104)	xylene	57	4.1
(105)	zinc chromate	0.0056	

(i) Calls by the Director. Notwithstanding any other provision of this Rule or 15A NCAC 2D .1104, the Director may, upon written finding that a source or facility emitting toxic air pollutants presents an unacceptable risk to human health based on the acceptable ambient levels in 15A NCAC 2D .1104 or epidemiology studies, require the owner or operator of the source or facility to submit a permit application to comply with 15A NCAC 2D .1100.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.108; 143B-282.

## SUBCHAPTER 2Q - AIR QUALITY PERMIT PROCEDURES

### SECTION .0100 - GENERAL PROVISIONS

#### .0102 ACTIVITIES EXEMPTED FROM PERMIT REQUIREMENTS

(a) If a source is subject to any of the following rules, then the source is not exempted from permit requirements,

and the exemptions in Paragraph (b) of this Rule do not apply:

- (1) new source performance standards under 15A NCAC 2D .0524 or 40 CFR Part 60, except new residential wood heaters;
- (2) national emission standards for hazardous air pollutants under 15A NCAC 2D .0525 .1110 or 40 CFR Part 61, except asbestos demolition and renovation activities;

(3) prevention of significant deterioration under 15A NCAC 2D .0530;

(4) new source review under 15A NCAC 2D .0531 or .0532;

(5) sources of volatile organic compounds subject to the requirements of 15A NCAC 2D .0900 that are located in Mecklenburg and Gaston Counties;

(6) sources required to apply maximum achievable control technology for hazardous air pollutants under 15A NCAC 2D .1109 or under 15A NCAC 2D .1111 or 40 CFR Part 63 or to apply generally available control technology (GACT) or work practice standards for hazardous air pollutants under 15A NCAC 2D .1111 or 40 CFR Part 63 63, except perchloroethylene dry cleaners; or

(7) sources at facilities subject to 15A NCAC 2D .1100. (If a source does not emit a toxic air pollutant for which the facility at which it is located has been evaluated, it shall be exempted from needing a permit if it qualifies for one of the exemptions in Paragraph (b) of this Rule).

(b) The following activities do not need a permit or permit modification under this Subchapter; however, the Director may require the owner or operator of these activities to register them under 15A NCAC 2D .0200:

(1) activities exempted because of category (These activities shall not be included on the permit application or in the permit.):

(A) maintenance, upkeep, and replacement:

(i) maintenance, structural changes, or repairs which do not change the capacity of such process, fuel-burning, refuse-burning, or control equipment, and do not involve any change in quality or nature or increase in quantity of emission of regulated air pollutants;

(ii) housekeeping activities or building maintenance procedures, including painting buildings, resurfacing floors, roof repair, washing, portable vacuum cleaners, sweeping, use and associated storage of janitorial products, or insulation removal;

(iii) use of office supplies, supplies to maintain copying equipment, or blueprint machines.

(iv) use of fire fighting equipment;

(v) paving parking lots; or

(vi) replacement of existing equipment with equipment of the same size, type, and function that does not result in an increase to the actual or potential emission of regulated air pollutants and that does not affect the compliance status, and with replacement equipment that fits the description of the existing equipment in the permit, including the application, such that the replacement equipment can be operated under that permit without any changes in the permit;

(B) air conditioning or ventilation: comfort air conditioning or comfort ventilating systems which do not transport, remove, or exhaust regulated air pollutants to the atmosphere;

(C) laboratory equipment activities:

(i) bench-scale, on-site laboratory equipment used exclusively for chemical or physical analysis for quality control purposes, staff instruction, water or wastewater analyses, or non-production environmental compliance assessments;

(ii) bench-scale experimentation, chemical or physical analyses, training or instruction from not-for-profit, non-production educational laboratories; non-production laboratory equipment used at non-profit health or non-profit educational institutions for chemical or physical analyses, bench-scale experimentation or training, or instruction; or

(iii) bench-scale experimentation, chemical or physical analyses, training or instruction from hospitals or health laboratories pursuant to the determination or diagnoses of illnesses; or laboratory equipment used for chemical or physical analysis for bench-scale experimentation, training, instruction, or research and development that is not required to be permitted under Section .0500 of this Subchapter;

(iv) research and development laboratory activities that are not required to be permitted under Section .0500 of this Subchapter provided the activity produces no commercial product or feedstock material;

(D) storage tanks:

(i) storage tanks used solely to store fuel oils, kerosene, diesel, crude oil, used motor oil, lubricants, natural gas, or liquified petroleum gas;

(ii) storage tanks used to store gasoline for which there are no applicable requirements except Stage I controls under 15A NCAC 2D .0928;

(iii) storage tanks used solely to store inorganic liquids; or

(iv) storage tanks or vessels used for the temporary containment of materials resulting from an emergency response to an unanticipated release of hazardous materials;

(E) combustion and heat transfer equipment:

(i) space heaters burning distillate oil, kerosene, natural gas, or liquified petroleum gas operating by direct heat transfer and

used solely for comfort heat;

(ii) residential wood stoves, heaters, or fireplaces;

(iii) hot water heaters which are used for domestic purposes only and are not used to heat process water;

(F) wastewater treatment processes: industrial wastewater treatment processes or municipal wastewater treatment processes for which there are no applicable requirements;

(G) gasoline distribution: gasoline service stations or gasoline dispensing facilities that are not required to be permitted under Section .0500 of this Subchapter;

(H) processes:

- (i) small electric motor burn-out ovens with secondary combustion chambers or after-burners;
- (ii) hosiery knitting machines and associated lint screens, hosiery dryers and associated lint screens, and hosiery dyeing processes where bleach or solvent dues are not used; wood planners;
- (iii) ~~(iv)~~ miscellaneous:
- (i) motor vehicles, aircraft, marine vessels, locomotives, tractors or other self-propelled vehicles with internal combustion engines;
- (ii) non-self-propelled non-road engines, except generators, regulated by rules adopted under Title II of the federal Clean Air Act;
- (iii) ~~(iv)~~ equipment used for the preparation of food for direct on-site human consumption;
- (iv) ~~(v)~~ a source whose emissions are regulated only under Section 112(r) or Title VI of the federal Clean Air Act that is not required to be permitted under Section .0500 of this Subchapter;
- (v) ~~(vi)~~ exit gases from in-line process analyzers;
- (vi) ~~(vii)~~ stacks or vents to prevent escape of sewer gases from domestic waste through plumbing traps;
- (vii) ~~(viii)~~ refrigeration equipment that is consistent with Section 601 through 618 of Title VI (Stratospheric Ozone Protection) of the federal Clean Air Act, 40 CFR Part 82, and any other regulations promulgated by EPA under Title VI for stratospheric ozone protection, except those units used as or in conjunction with air pollution control equipment;
- (viii) ~~(ix)~~ equipment not vented to the outdoor atmosphere with the exception of equipment that emits volatile organic com-

pounds;

(ix) ~~(viii)~~ equipment that does not emit any regulated air pollutants; or

(x) ~~(ix)~~ sources for which there are no applicable requirements and are not required to be permitted under Section .0500 of this Subchapter.

(2) activities exempted because of size or production rate (These activities shall not be included in the permit. If the facility is subject to the permitting procedures under Section .0500 of this Subchapter, these activities shall be listed on the permit applications; otherwise, these activities shall not be listed on the permit applications.):

(A) storage tanks:

- (i) above-ground storage tanks with a storage capacity of no more than 1100 gallons storing organic liquids liquids, ~~excluding hazardous air pollutants~~, with a true vapor pressure of no more than 10.8 pounds per square inch absolute at 70 F; or
- (ii) underground storage tanks with a storage capacity of no more than 2500 gallons storing organic liquids liquids, ~~excluding hazardous air pollutants~~, with a true vapor pressure of no more than 10.8 psi absolute at 70 F;

(B) combustion and heat transfer equipment:

- (i) fuel combustion equipment, except for internal combustion engines, for which construction, modification, or reconstruction commenced after June 9, 1989, firing exclusively kerosene, No. 1 fuel oil, No. 2 fuel oil, equivalent unadulterated fuels, natural gas, liquefied petroleum gas, or a mixture of these fuels with a heat input rating less than 10 million BTU per hour;
- (ii) fuel combustion equipment, except for internal combustion engines, for which construction, modification, or reconstruction commenced before June 10, 1989, firing exclusively:

- (I) kerosene, No. 1 fuel oil, No. 2 fuel oil, equivalent unadulterated fuels, or a mixture of these fuels with gaseous fuels with a heat input rating less than 30 million BTU per hour;
- (II) natural gas or liquefied petroleum gas with a heat input rating less than 65 million BTU per hour;
- (iii) space heaters burning waste oil if:
  - (I) The heater burns only oil that the owner or operator generates or used oil from do-it-yourself oil changers who generate used oil as household wastes;
  - (II) The heater is designed to have a maximum capacity of not more than

500,000 Btu per hour; and

(III) The combustion gases from the heater are vented to the ambient air;

(iv) emergency use generators and other internal combustion engines not regulated by rules adopted under Title II of the federal Clean Air Act, except self-propelled vehicles, that have a rated capacity of no more than:

(I) 310 kilowatts or 460 horsepower for natural gas-fired engines,

(II) 830 kilowatts or 1150 horsepower for liquified petroleum gas-fired engines, ~~or~~

(III) 270 kilowatts or 410 horsepower for diesel-fired engines; engines, or

(IV) 21 kilowatts or 31 horsepower for gasoline engines;

(v) portable generators and other portable equipment with internal combustion engines not regulated by rules adopted under Title II of the federal Clean Air Act, except self-propelled vehicles, that operate at the facility no more than a combined 350 hours for any 365-day period provided such generators or engines are no more than 750 kilowatt or 1100 horsepower each;

(C) gasoline distribution: bulk gasoline plants with an average daily throughput of less than 4000 gallons that is not required to be permitted under Section .0500 of this Subchapter;

(D) processes:

(i) printing, paint spray booths or other painting or coating operations without air pollution control devices (water wash and filters that are an integral part of the paint spray booth are not considered air pollution control devices) located at a facility whose facility-wide actual emissions of:

(I) ~~(i) Volatile organic compounds are less than five tons per year, and~~

(II) ~~(ii) Photochemically reactive solvent emissions under 15A NCAC 2D .0518 are less than 40 30 pounds per day;~~ provided the facility is not required to be permitted under Section .0500 of this Subchapter. Subchapter;

(ii) saw mills that saw no more than 2,000,000 board feet per year provided only green wood is sawed;

(iii) perchloroethylene dry cleaners that consume less 13,000 pounds of perchloroethylene per year;

(E) miscellaneous:

(i) any source without an air pollution control device whose potential emissions of partic-

ulate, sulfur dioxide, nitrogen oxides, volatile organic compounds, and carbon monoxide are each no more than five tons per year and whose potential emissions of hazardous air pollutants are below their lesser quantity cutoff except: with a potential to emit no more than five tons per year of each regulated pollutant that is not a hazardous air pollutant and whose emissions would not violate any applicable emissions standard and whose emissions of all hazardous air pollutants are below their respective lesser quantity cutoff emission rates in 40 CFR Part 63;

(I) storage tanks,

(II) fuel combustion equipment,

(III) space heaters burning waste oil,

(IV) emergency generators or other non-self-propelled combustion engines,

(V) portable generators,

(VI) bulk gasoline plants,

(VII) printing, paint spray booths, or other painting or coating operations,

(VIII) saw mills, or

(IX) perchloroethylene dry cleaners,

provided that the total potential emissions of particulate, sulfur dioxide, nitrogen oxides, volatile organic compounds, and carbon monoxide from the facility are each less than 40 tons per year and the total potential emissions of all hazardous air pollutants are below the lesser quantity cutoff or provided that the facility has an air quality permit;

(ii) any facility without an air pollution control device whose actual emissions of particulate, sulfur dioxide, nitrogen oxides, volatile organic compounds, or carbon monoxide are each less than five tons per year, whose potential emissions of all hazardous air pollutants are below their respective lesser quality cutoff emission rates in 40 CFR Part 63, and which is not required to have a permit under Section .0500 of this Subchapter;

(iii) emissions of any hazardous air pollutant where the emissions from the facility of that hazardous air pollutant is below its lesser quantity cutoff emission rate in 40 CFR Part 63 any source that only emits hazardous air pollutants that are not also a particulate or a volatile organic compound and whose potential emissions of hazardous air pollutants are below their lesser quantity cutoff;

(iv) electrostatic dry powder coating operations

equipped with powder recovery including curing ovens with a heat input of less than 10,000,000 BTU per hour; or

(v) any incinerator covered under Paragraph (d) of 15A NCAC 2D .1201.

(F) case-by-case exemption: activities that the applicant demonstrates to the satisfaction of the Director to be negligible in their air quality impacts, not to have any air pollution control device, and not to violate any applicable emission control standard when operating at maximum design capacity or maximum operating rate, whichever is greater.

(c) Because an activity is exempted from being required to have a permit does not mean that the activity is exempted from any applicable requirement or that the owner or operator of the source is exempted from demonstrating compliance with any applicable requirement.

(d) Emissions from stationary source activities identified in Paragraph (b) of this Rule shall be included in determining compliance with the toxic air pollutant requirements under 15A NCAC 2D .1100 or 2H .0610.

(e) The owner or operator of a facility or source claiming an exemption under Paragraph (b) of this Rule shall provide the Director documentation upon request that the facility or source is qualified for that exemption.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(4); 143-215.108.*

**.0103 DEFINITIONS**

For the purposes of this Subchapter, the definitions in G.S. 143-212 and 143-213 and the following definitions apply:

(1) "Air Pollutant" means an air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive substance or matter which is emitted into or otherwise enters the ambient air. Water vapor is not considered to be an air pollutant.

(2) "Allowable emissions" mean the maximum emissions allowed by the applicable rules contained in 15A NCAC 2D or by permit conditions if the permit limits emissions to a lesser amount.

(3) "Alter or change" means to make a modification.

(4) "Applicable requirements" means:

(a) any requirement of Section .0500 of this Subchapter;

(b) any standard or other requirement provided for in the implementation plan approved or promulgated by EPA through rulemaking under Title I of the federal Clean Air Act that implements the relevant requirements of the federal Clean Air Act including any revisions to 40 CFR Part 52;

(c) any term or condition of a construction permit for a facility covered under 15A NCAC 2D .0530, .0531, or .0532;

(d) any standard or other requirement under Section 111 or 112 of the federal Clean Air Act, but not including the contents of any risk management plan required under Section 112 of the federal Clean Air Act;

(e) any standard or other requirement under Title IV;

(f) any standard or other requirement governing solid waste incineration under Section 129 of the federal Clean Air Act;

(g) any standard or other requirement under Section 183(e), 183(f), or 328 of the federal Clean Air Act;

(h) any standard or requirement under Title VI of the federal Clean Air Act unless a permit for such requirement is not required under this Section;

(i) any requirement under Section 504(b) or 114(a)(3) of the federal Clean Air Act; or

(j) any national ambient air quality standard or increment or visibility requirement under Part C of Title I of the federal Clean Air Act, but only as it would apply to temporary sources permitted pursuant to 504(e) of the federal Clean Air Act.

(5) "Applicant" means the person who is applying for an air quality permit from the Division.

(6) "Application package" means all elements or documents needed to make an application complete.

(7) "CFR" means Code of Federal Regulations.

(8) "Construction" means change in the method of operation or any physical change (including on-site fabrication, erection, installation, replacement, demolition, or modification of a source) that results in a change in emissions or affects the compliance status.

(9) "Director" means the Director of the Division of Environmental Management.

(10) "Division" means the Division of Environmental Management.

(11) "EPA" means the United States Environmental Protection Agency or the Administrator of the Environmental Protection Agency.

(12) "EPA approves" means full approval, interim approval, or partial approval by EPA.

(13) "Equivalent unadulterated fuels" means used oils that have been refined such that the content of toxic additives or contaminants in the oil are no greater than those in unadulterated fossil fuels.

(14) "Facility" means all of the pollutant emitting activities activities, except transportation facilities, that are located on one or more ~~contiguous~~ or adjacent properties under common control.

(15) "Federally enforceable" or "federal-enforceable" means enforceable by EPA.

(16) "Fuel combustion equipment" means any fuel burning source covered under 15A NCAC 2D

.0503, .0504, .0524(a)(1), (29), (56), or (65), or .0536.

(17) "Green wood" means wood with a moisture content of 18 percent or more.

(18) (17) "Hazardous air pollutant" means any pollutant which has been listed pursuant to Section 112(b) of the federal Clean Air Act. Pollutants which are listed only in 15A NCAC 2D .1104 (Toxic Air Pollutant Guidelines), but not pursuant to Section 112(b), are not included in this definition.

(19) (18) "Insignificant activities" means any activity exempted under Rule .0102 of this Section.

(20) (19) "Irrevocable contract" means a contract that cannot be revoked without substantial penalty.

(21) (a) "Lesser quantity cutoff" means:  
for a source subject to the requirements of Section 112(d) or (j) of the federal Clean Air Act, the level of emissions of hazardous air pollutants below which the following are not required:  
(i) maximum achievable control technology (MACT) or generally available control technology (GACT) requirement under Section 112(d) of the federal Clean Air Act;  
(ii) substitute MACT or GACT adopted under Section 112(l) of the federal Clean Air Act; or  
(iii) a MACT standard established under Section 112(j) of the federal Clean Air Act;  
(b) for modification of a source subject to, or may be subject to, the requirements of Section 112(g) of the federal Clean Air Act, the level of emissions of hazardous air pollutants below which MACT is not required to be applied under Section 112(g) of the federal Clean Air Act; or  
(c) for all other sources, potential emissions of each hazardous air pollutant below 10 tons per year and the aggregate potential emissions of all hazardous air pollutants below 25 tons per year.

(22) "Major facility" means a major source as defined under 40 CFR 70.2.

(23) (20) "Modification" means any physical change or change in method of operation that results in a change in emissions or affects compliance status of the source or facility.

(24) (21) "Owner or operator" means any person who owns, leases, operates, controls, or supervises a facility, source, or air pollution control equipment.

(25) "Peak shaving generator" means a generator that is located at a facility and is used only to serve that facility's on-site electrical load during peak demand periods for the purpose of reducing the cost of electricity; it does not generate electricity for resale. A peak shaving generator may also be used for emergency backup.

(26) (22) "Permit" means the legally binding written document, including any revisions thereto, issued pursuant to G.S. 143-215.108 to the owner or operator of a facility or source that emits one or more air pollutants and that allows that facility or source to operate in compliance with G.S. 143-215.108. This document specifies the requirements applicable to the facility or source and to the permittee.

(27) (23) "Permittee" means the person who has received an air quality permit from the Division.

(28) (24) "Potential emissions" means the rate of emissions of any air pollutant which would occur at the facility's maximum capacity to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a facility to emit an air pollutant shall be treated as a part of its design if the limitation is federally enforceable. Such physical or operational limitations include air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed. Potential emissions include fugitive emissions as specified in the definition of major source in 40 CFR 70.2. Potential emissions do not include a facility's secondary emissions such as those from motor vehicles associated with the facility and do not include emissions from insignificant activities listed in Rule .0102(b)(1) of this Section. If a rule in 40 CFR Part 63 uses a different methodology to calculate potential emissions, that methodology shall be used for sources and pollutants covered under that rule.

(29) "Portable generator" means a generator permanently mounted on a trailer or a frame with wheels.

(30) (25) "Regulated air pollutant" means:  
(a) nitrogen oxides or any volatile organic compound as defined under 40 CFR 51.100;  
(b) any pollutant for which there is an ambient air quality standard under 40 CFR Part 50 Section 15A NCAC 2D .0400;  
(c) any pollutant regulated under 15A NCAC 2D .0524, .1110, or .1111 or .0525 or 40 CFR Part 60, 61, or 63;  
(d) any pollutant subject to a standard promulgated under Section 112 of the federal Clean Air Act or other requirements established under Section 112 of the federal Clean Air Act, including Section 112(g) (but only for the facility subject to Section 112(g)(2) of the federal Clean Air Act), (j), or (r) of the federal Clean Air Act; or any Class I or II substance listed under Section 602 of the federal Clean Air Act.  
(e)

(31) (26) "Source" means any stationary article, machine, process equipment, or other contrivance, or combination thereof, from which air pollutants emanate or are emitted, either directly or indirectly.

(32) (27) "Toxic air pollutant" means any of the carcin-

ogens, chronic toxicants, acute systemic toxicants, or acute irritants that are listed in 15A NCAC 2D .1104.

(33) (28) "Transportation facility" means a complex source as defined at G.S. 143-213(22) that is subject to the requirements of 15A NCAC 2D .0800.

(34) (29) "Unadulterated fossil fuel" means fuel oils, coal, natural gas, or liquefied petroleum gas to which no toxic additives have been added that could result in the emissions of a toxic air pollutant listed under 15A NCAC 2D .1104.

Statutory Authority G.S. 143-215.3(a)(1); 143-212; 143-213.

#### **.0109 COMPLIANCE SCHEDULE FOR PREVIOUSLY EXEMPTED ACTIVITIES**

(a) If a source has heretofore been exempted from needing a permit, but because of change in permit exemptions, it is now required to have a permit as follows:

(1) If the source is located at a facility that currently has an air quality permit, the source shall be added to the air quality permit of the facility the next time that permit is revised or renewed, whichever occurs first.

(2) If the source is located at a facility that currently does not have an air quality permit, the owner or operator of that source shall apply for a permit:

(A) by the schedule in Rule .0506 of this Subchapter if the source is subject to the requirements of Section .0500 of this Subchapter, or

(B) by January 1, 1998, if the source is not subject to the requirements of Section .0500 of this Subchapter.

(b) If a source becomes subject to requirements promulgated under 40 CFR Part 63; the owner or operator of the source shall apply for a permit:

(1) by February 1, 1995, if the source is required to apply generally available control technology (GACT) promulgated under 40 CFR Part 63 before July 1, 1994, or July 1, 1994,

(2) by the schedule in Rule .0506 of this Subchapter for a maximum achievable control technology (MACT) requirement under 40 CFR Part 63 promulgated before EPA approves Section .0500 of this Subchapter; or

(3) (2) within 180 days after the date of promulgation:

(A) of a GACT requirement under 40 CFR Part 63 if the source is required to apply a GACT promulgated after June 30, 1994, or

(B) of a maximum achievable control technology (MACT) requirement under 40 CFR Part 63 promulgated after EPA approves Section .0500 of this Subchapter.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109.

#### **SECTION .0200 - PERMIT FEES**

##### **.0201 APPLICABILITY**

(a) With the exceptions in Paragraphs (b) and (d) (b), (d), and (e) of this Rule, this Section, Section is applicable:

(1) as of the permit anniversary date on or after July 1, 1994, to facilities that have or will have actual emissions of:

(A) 100 tons per year or more of particulate, sulfur dioxide, nitrogen oxides, volatile organic compounds, or carbon monoxide;

(B) 10 tons per year or more of at least one hazardous air pollutant; or

(C) 25 tons per year or more of all hazardous air pollutants combined; and

(2) as of the permit anniversary date on or after October 1, 1994, to all facilities other than the facilities described in Subparagraph (a)(1) of this Rule.

(b) The permit application fees in this Section are applicable on and after January 1, 1995.

(c) Before the applicability date of Paragraph (a) or (b) of this Rule, the fees of 15A NCAC 2H .0609 are in effect.

(d) A general facility obtaining a permit under Rule .0509 of this Subchapter shall comply with provisions of this Section that are applicable to a Title V facility except that the fees are different as stated.

(e) (d) Rule .0207 of this Section is applicable to all facilities as of its effective date.

Statutory Authority G.S. 143-215.3(a)(1),(1a),(1b), (1d); 143-215.106A; 150B-21.6.

##### **.0202 DEFINITIONS**

For the purposes of this Section, the following definitions apply:

(1) "Actual emissions" means the actual rate of emissions in tons per year of any air pollutant emitted from the facility over the preceding calendar year. Actual emissions shall be calculated using the sources' actual operating hours, production rates, in-place control equipment, and types of materials processed, stored, or combusted during the preceding calendar year. Actual emissions include fugitive emissions as specified in the definition of major source in 40 CFR 70.2. For fee applicability and calculation purposes under Rule .0201 or .0203 of this Section and emissions reporting purposes under Rule .0207 of this Section, actual emissions do not include emissions beyond the normal emissions during violations, malfunctions, start-ups, and shut-downs, do not include a facility's secondary emissions such as those from motor vehicles

associated with the facility, and do not include emissions from insignificant activities listed in Rule .0102(b)(1) of this Subchapter.

(2) "Title V facility" means a facility that ~~has or shall have potential emissions of:~~

(a) ~~has or shall have potential emissions of:~~

(a) ~~100 tons per year or more of at least one regulated air pollutant;~~

(i) ~~(b) 10 tons per year or more of at least one hazardous air pollutant; or~~

(ii) ~~(c) 25 tons per year or more of all hazardous air pollutants combined; or~~

(iii) ~~100 tons per year or more of at least one regulated air pollutant except any pollutant that is regulated solely because it is subject to a regulation or standard under Section 112(r) of the federal Clean Air Act (accidental releases). If a facility has portions of the facility classified under different Major Groups as described in the Standard Industrial Classification Manual, 1987, the portions will be evaluated separately with regard to this threshold; or If a facility has portions of the facility classified under different Major Groups as described in the Standard Industrial Classification Manual, 1987, the portions will be evaluated separately with regard to thresholds in this definition.~~

(b) is a facility required to have a permit under Section .0500 of this Subchapter because the facility was a major facility on or after the first compliance date of any requirement in 40 CFR Part 61 or 63.

(3) "Synthetic minor facility" means a facility that would be a Title V facility except that the potential emissions are reduced below the thresholds in Paragraph (2) of this Rule by one or more physical or operational limitations on the capacity of the facility to emit an air pollutant. Such limitations must be enforceable by EPA and may include air pollution control equipment and restrictions on hours of operation, the type or amount of material combusted, stored, or processed.

(4) "General facility" means a facility obtaining a permit under Rule .0310 or .0509 of this Subchapter.

(5) "Small facility" means a facility that is not a Title V facility, a synthetic minor facility, a general facility, nor solely a transportation facility.

(6) "Before Title V program" means before complete, interim, or partial approval by EPA of the North Carolina program to implement Title V.

(7) "After Title V program" means after complete, interim, or partial approval by EPA of the North Carolina program to implement Title V.

Statutory Authority G.S. 143-215.3(a)(1),(1a),(1b),(1d); 150B-21.6.

#### .0203 PERMIT AND APPLICATION FEES

(a) The owner or operator of any facility holding a permit shall pay the following permit fees:

##### ANNUAL PERMIT FEES (FOR CALENDAR YEAR 1994)

Facility Category	Tonnage Factor	Basic Permit Fee	Nonattainment Area Added Fee
Title V	\$14.63	\$5100	\$2600
Synthetic Minor		1500	
Small		250	
Transportation		0	
General	50% of the otherwise applicable fee		

A facility, other than a Title V facility, which has been in compliance may be eligible for a 25% discount from the annual permit fees as described in Paragraph (a) of Rule .0205 of this Section. Annual permit fees for Title V facilities shall be adjusted for inflation as described in Rule .0204 of this Section. Annual permit fees for Title V facilities consist of the sum of the applicable fee elements.

(b) In addition to the annual permit fee, a permit applicant shall pay a non-refundable permit application fee as follows:

##### PERMIT APPLICATION FEES (EFFECTIVE JANUARY 1, 1995) (FEES FOR CALENDAR YEAR 1994)

**PROPOSED RULES**

<u>Facility Category</u>	<u>New or Modification</u>	<u>New or Significant Modification</u>	<u>Q .0300 or Minor Modification</u>	<u>Ownership Change</u>
Title V (before Title V Program)	\$700			\$50
Title V (after Title V Program)		\$7200	\$700	50
Title V (PSD or NSR/NAA)	10900			50
Title V (PSD and NSR/NAA)	21200			50
Synthetic Minor	400			50
Small	50			25
Transportation	400			50
General	50% of the otherwise applicable fee			25

Permit application fees for Title V facilities shall be adjusted for inflation as described in Rule .0204 of this Section.

(c) If a facility, other than a general facility, belongs to more than one facility category, the fees shall be those of the applicable category with the highest fees. If a permit application belongs to more than one type of application, the fee shall be that of the applicable permit application type with the highest fee.

(d) The tonnage factor fee shall be applicable only to Title V facilities. It shall be computed by multiplying the tonnage factor indicated in the table in Paragraph (a) of this Rule by the facility's combined total actual emissions of all regulated air pollutants, rounded to the nearest ton, contained in the latest emissions inventory that has been completed by the Division. The calculation shall not include:

- (1) carbon monoxide;
- (2) any pollutant that is regulated solely because it is a Class I or II substance listed under Section 602 of the federal Clean Air Act (ozone depleters);
- (3) any pollutant that is regulated solely because it is subject to a regulation or standard under Section 112(r) of the federal Clean Air Act (accidental releases); and
- (4) the amount of actual emissions of each pollutant that exceeds 4,000 tons per year.

Even though a pollutant may be classified in more than one pollutant category, the amount of pollutant emitted shall be counted only once for tonnage factor fee purposes and in a pollutant category chosen by the permittee. If a facility has more than one permit, the tonnage factor fee for the facility's combined total actual emissions as described in this Paragraph shall be paid only on the permit whose anniversary date first occurs on or after July 1.

(e) The nonattainment area added fee shall be applicable only to facilities located in a nonattainment area defined in 15A NCAC 2D .0531 (Sources in Nonattainment Areas) and subject to 15A NCAC 2D .0531 or 15A NCAC 2D .0900 (Volatile Organic Compounds).

(f) A Title V (PSD or NSR/NAA) facility is a facility whose application is subject to review under 15A NCAC 2D .0530 (Prevention of Significant Deterioration) or 15A NCAC 2D .0531 (Sources in Nonattainment Areas).

(g) A Title V (PSD and NSR/NAA) facility is a facility whose application is subject to review under 15A NCAC 2D .0530 (Prevention of Significant Deterioration) and 15A NCAC 2D .0531 (Sources in Nonattainment Areas).

(h) Minor modification permit applications which are group processed require the payment of only one permit application fee per facility included in the group.

(i) No permit application fee is required for renewal of an existing permit, for changes to an unexpired permit when the only reason for the changes is initiated by the Director or the Commission, for a name change with no ownership change, for a change under Rule .0523 (Changes Not Requiring Permit Revisions) of this Subchapter, or for a construction date change, a test date change, a reporting procedure change, or a similar change.

(j) The permit application fee paid for modifications under 15A NCAC 2Q .0400, Acid Rain Procedures, shall be the fee for the same modification if it were under 15A NCAC 2D .0500, Title V Procedures.

(k) An applicant who files permit applications pursuant to Rule .0504 of this Subchapter shall pay an application fee as would be determined by the application fee for the permit required under Section .0500 of this Subchapter; this fee will cover both applications provided that the second application covers only what is covered under the first application. If permit terms or conditions in an existing or future permit issued under Section .0500 of this Subchapter will be established or modified by an application for a modification and if these terms or conditions are enforceable by the Division only, then the applicant shall pay the fee under the column entitled "2Q .0300 Only or Minor Modification" in the table in Paragraph (b) of this Rule. This Paragraph does not apply until EPA approves Section .0500 of this Subchapter.

Statutory Authority G.S. 143-215.3(a)(1),(1a),(1b), (1d); 143-215.106A; 150B-21.6.

#### .0204 INFLATION ADJUSTMENT

Beginning in 1995, the fees of Rule .0203 of this Section for Title V facilities shall be adjusted as of January 1st of each year for inflation. The inflation adjustment shall be done by the method described in 40 CFR 70.9(b)(2)(iv), except that the method shall be altered to account for the fact that the fees shown in Rule .0203 of this Section are for calendar year 1994. The tonnage factor shall be rounded to a whole cent and the other fees shall be rounded to a whole dollar, except that the ownership change application fee shall be rounded to the nearest ten-dollar (\$10.00) increment.

Statutory Authority G.S. 143-215.3(a)(1),(1a),(1b), (1d); 143-215.106A; 150B-21.6.

#### .0207 ANNUAL EMISSIONS REPORTING

The owner or operator of:

(1) a Title V facility; or  
(2) any other facility, other than a transportation facility, that has actual emissions of 25 tons per year or more of nitrogen oxides or volatile organic compounds and that is located in Davidson, Durham, Forsyth, Gaston, Guilford, Mecklenburg, or Wake County, in Dutchville Township in Granville County, or in that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to the Yadkin River; shall report by June 30th of each year the actual and potential emissions of each regulated pollutant, each hazardous air pollutant, and each toxic air pollutant that is listed in 15A NCAC 2D .1104, from each source within the facility during the previous calendar year. The report shall be in or on such form as may be established by the Director. This annual reporting requirement shall begin with calendar year 1993 emissions. The accuracy of the report shall be certified by a responsible official of the facility as defined under 40 CFR 70.2. Reporting may be required for other facilities by permit condition or pursuant to 15A NCAC 2D .0202 (Registration of Air Pollution Sources).

(a) The owner or operator of a Title V facility shall report by June 30th of each year the actual emissions during the previous calendar year of:

(1) volatile organic compounds,

- (2) nitrogen oxides,
- (3) total suspended particulates,
- (4) sulfur dioxide,
- (5) fluorine,
- (6) hydrogen chloride,
- (7) hydrogen fluoride,
- (8) hydrogen sulfide,
- (9) methyl chloroform,
- (10) methylene chloride,
- (11) ozone,
- (12) chlorine,
- (13) hydrazine,
- (14) phosphine,
- (15) particulate matter (PM10),
- (16) carbon monoxide, and
- (17) lead.

(b) The owner or operator of a facility not included in Paragraph (a) of this Rule, other than a transportation facility, that has actual emissions of 25 tons per year or more of nitrogen oxides or volatile organic compounds and that is located in Davidson, Durham, Forsyth, Gaston, Guilford, Mecklenburg, or Wake County, in Dutchville Township in Granville County, or in that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to the Yadkin River shall report by June 30th of each year the actual emissions of nitrogen oxides and volatile organic compounds during the previous calendar year.

(c) The report shall be in or on such form as may be established by the Director. The Director may require reporting for sources within a facility, for other facilities, or for other pollutants, parameters, or information, by permit condition or pursuant to 15A NCAC 2D .0202 (Registration of Air Pollution Sources). This annual reporting requirement shall begin with calendar year 1993 emissions. The accuracy of the report shall be certified by a responsible official of the facility as defined under 40 CFR 70.2.

Statutory Authority G.S. 143-215.3(a)(1),(1a),(1b), (1d); 143-215.65; 143-215.106A; 143-215.107; 143B-282; 150B-21.6.

#### SECTION .0300 - CONSTRUCTION AND OPERATION PERMITS

**.0302 FACILITIES NOT LIKELY TO CONTRAVERE DEMONSTRATION**

(a) This Rule applies only to this Section. It does not apply to Section .0500 (Title V Procedures) of this Subchapter.

(b) If a facility is subject to any of the following rules, the facility is not exempted from permit requirements, and the exemptions in Paragraph (c) of this Rule do not apply:

- (1) new source performance standards under 15A NCAC 2D .0524 or 40 CFR Part 60, except new residential wood heaters;
- (2) national emission standards for hazardous air pollutants under 15A NCAC 2D ~~.0525~~ .1110 or 40 CFR Part 61, except asbestos demolition and renovation activities;
- (3) prevention of significant deterioration under 15A NCAC 2D .0530;
- (4) new source review under 15A NCAC 2D .0531 or .0532;
- (5) sources of volatile organic compounds subject to the requirements of 15A NCAC 2D .0900 that are located in Mecklenburg and Gaston Counties;
- (6) sources required to apply maximum achievable control technology for hazardous air pollutants under 15A NCAC 2D .1109 or under 40 CFR Part 63 or to apply generally available control technology (GACT) under or work practice standards 40 CFR Part 63;
- (7) sources at facilities subject to 15A NCAC 2D .1100; or
- (8) facilities subject to Title V permitting procedures under Section .0500 of this Subchapter.

(c) The owner or operator of any facility required to have a permit under this Section may request the Director to exempt the facility from the requirement to have a permit. The request shall be in writing. Along with the request, the owner or operator shall submit supporting documentation to show that air quality and emission control standards will not be, nor are likely to be, contravened. This documentation shall include:

- (1) documentation that the facility has no air pollution control devices;
- (2) documentation that no source at the facility will violate any applicable emissions control standard when operating at maximum design or operating rate, whichever is greater; and
- (3) ambient modeling showing that the ambient impact of emissions from the facility will not exceed the levels in 15A NCAC 2D .0532(c)(5) when all sources at the facility are operated at maximum design or operating rate, whichever is greater.

If the documentation shows to the satisfaction of the Director that air quality and emission control standards will not be, nor are likely to be, contravened, a permit shall not be required.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.108.*

**.0311 PERMITTING OF FACILITIES AT MULTIPLE TEMPORARY SITES**

(a) The Director may issue a single permit authorizing emissions from a facility or source at multiple temporary sites.

(b) ~~In order for a facility or source to qualify for a permit for multiple temporary sites under this Rule, the operation must involve at least one change of site during the term of the permit.~~

(b) Permits for facilities at multiple temporary sites shall include:

- (1) the identification of each site;
- (2) the conditions that will assure compliance with all applicable requirements at all approved sites;
- (3) a requirement that the permittee notify the Division at least 10 days in advance of each change of site; and
- (4) the conditions that assure compliance with all other provisions of this Section.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.108.*

**SECTION .0500 - TITLE V PROCEDURES**

**.0501 PURPOSE OF SECTION AND REQUIREMENT FOR A PERMIT**

(a) The purpose of this Section is to establish an air quality permitting program as required under Title V and 40 CFR Part 70.

(b) The procedures and requirements under this Section do not apply until EPA approves this Section.

(c) With the exception in Paragraph (d) of this Rule, the owner or operator of an existing facility, new facility, or modification of an existing facility (except for minor modifications under Rule .0515 of this Section), including significant modifications that would not contravene or conflict with a condition in the existing permit, subject to the requirements of this Section shall not begin construction without first obtaining:

- (1) a construction and operation permit following the procedures under this Section (except for Rule .0504), or
- (2) a construction and operation permit following the procedures under Rule .0504 and filing a complete application within 12 months after commencing operation to modify the construction and operation permit to meet the requirements of this Section.

(d) If the permittee proposes to make a significant modification under Rule .0516 of this Section that would contravene or conflict with a condition in the existing permit, he shall not begin construction or make the modification until he has obtained:

- (1) a construction and operation permit following the procedures under this Section (except for

(2) Rule .0504 of this Section); or a construction and operation permit following the procedures under Rule .0504 of this Section and, before beginning operation, files an application and obtains a permit modifying the construction and operation permit to meet the requirements of this Section (except for Rule .0504 of this Section).

(e) All facilities subject to this Section must have a permit to operate that assures compliance with 40 CFR Part 70 and all applicable requirements.

(f) Except as allowed under Rule .0515 (minor modifications) of this Section, no facility subject to the requirements of this Section may operate after the time that it is required to submit a timely and complete application under this Section except in compliance with a permit issued under this Section. This Paragraph does not apply to initial submittals under Rule .0506 of this Section or to permit renewals under Rule .0513 of this Section.

(g) If the conditions of Rule .0512(b) (application shield) of this Section are met, the facility's failure to have a permit under this Section shall not be a violation.

(h) If the owner or operator of a facility subject to the requirements of this Section submits an application for a revision to his permit before receiving the initial permit under this Section, the application for the revision shall be processed under Section .0300 of this Subchapter.

(i) (4) The owner or operator of a facility or source subject to the requirements of this Section may also be subject to the toxic air pollutant procedures under 15A NCAC 2H .0610.

(j) (4) The owner or operator of an affected unit subject to the acid rain program requirements of Title IV is also subject to the procedures under Section .0400 of this Subchapter.

(k) (4) The owner or operator of a facility subject to the requirements of this Section shall pay permit fees in accordance with the requirements of Section .0200 of this Subchapter.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108.*

## .0502 APPLICABILITY

(a) Except as provided in Paragraph (b) of this Rule, the following facilities are required to obtain a permit under this Section:

- (1) major facilities;
- (2) facilities with a source subject to 15A NCAC 2D .0524 or 40 CFR Part 60, except new residential wood heaters;
- (3) facilities with a source subject to 15A NCAC 2D .0525 .1110 or 40 CFR Part 61, except asbestos demolition and renovation activities;
- (4) facilities with a source subject to 15A NCAC 2D .1111 or 40 CFR Part 63 or any other standard or other requirement under Section 112 of the federal Clean Air Act, except that a source is not required to obtain a permit solely because it is subject to rules or requirements under Section 112(r) of the federal Clean Air Act;
- (5) facilities to which 15A NCAC 2D .0517(2), .0528, .0529, or .0534 applies;
- (6) facilities with a source subject to Title IV or 40 CFR Part 72; or
- (7) facilities in a source category designated by EPA as subject to the requirements of 40 CFR Part 70.

(b) This Section does not apply to minor facilities with sources subject to requirements of 15A NCAC 2D ~~.0524 or .0525 .0524, .1110 or .1111~~ or 40 CFR Part 60, 61, or 63 until EPA requires these facilities to have a permit under 40 CFR Part 70.

(c) Research and development operations located at manufacturing facilities shall be considered as a separate and discrete facility for the purposes of determining whether such operations constitute a major facility subject to the permitting requirements of this Section. Except where such research and development operations by themselves constitute a major facility, they shall be exempted from the permitting requirements of this Section.

(d) Once a facility is subject to this Section because of emissions of one pollutant, the owner or operator of that facility shall submit an application that includes all sources of all regulated air pollutants located at the facility except for insignificant activities exempted because of category under Rule .0102(b)(1) of this Subchapter.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108.*

## .0503 DEFINITIONS

For the purposes of this Section, the definitions in G.S. 143-212 and 143-213 and the following definitions apply:

- (1) "Affected States" means all states or local air pollution control agencies whose areas of jurisdiction are:
  - (a) contiguous to North Carolina and located less than  $D=Q/12.5$  from the facility, where:
    - (i)  $Q$  = emissions of the pollutant emitted at the highest permitted rate in tons per year, and
    - (ii)  $D$  = distance from the facility to the contiguous state or local air pollution control agency in miles unless the applicant can demonstrate to the satisfaction of the Director that the ambient impact in the contiguous states or local air pollution control agencies is less than the incremental ambient levels in 15A NCAC 2D .0532 (c)(5); or
  - (b) within 50 miles of the permitted facility.
- (2) "Complete application" means an application that provides all information described under 40 CFR 70.5(c) and such other information that is necessary to determine compliance with all applicable

(3) requirements.

(4) "Draft permit" means the version of a permit that the Division offers public participation under Rule .0521 of this Section or affected State review under Rule .0522 of this Section.

(4) "Emissions allowable under the permit" means a federally enforceable permit term or condition determined at issuance to be an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emissions cap that the facility has assumed to avoid an applicable requirement to which the facility would otherwise be subject.

(5) "Final permit" means the version of a permit that the Director issues that has completed all review procedures required under this Section if the permittee does not file a petition under Article 3 of G.S. 150B.

(6) "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally-equivalent opening.

(7) "Insignificant activities" means any activity exempted under Rule .0102 or .0508(aa) of this Subchapter.

(8) "Insignificant activities exempted because of category" means any activity exempted under 15A NCAC 2Q .0102(b)(1).

(9) "Insignificant activities exempted because of size or production rate" means any activity exempted under 15A NCAC 2Q .0102(b)(2).

(10) ~~"Major facility" means a major source as defined under 40 CFR 70.2.~~

(10) (11) "Minor facility" means any facility that is not a major facility.

(11) (12) "Operation" means the utilization of equipment that emits regulated pollutants.

(12) (13) "Permit renewal" means the process by which a permit is reissued at the end of its term.

(13) (14) "Permit revision" means any permit modification under Rule .0515, .0516, or .0517 of this Section or any administrative permit amendment under Rule .0514 of this Section.

(14) (15) "Proposed permit" means the version of a permit that the Director proposes to issue and forwards to EPA for review under Rule .0522 of this Section.

(15) (16) "Relevant source" means only those sources that are subject to applicable requirements.

(16) (17) "Responsible official" means a responsible official as defined under 40 CFR 70.2.

(17) (18) "Section 502(b)(10) changes" means changes that contravene an express permit term or condition. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements.

(18) (19) "Synthetic minor facility" means a facility that would otherwise be required to follow the procedures of this Section except that the potential to emit is restricted by one or more federally enforceable physical or operational limitations, including air pollution control equipment and restrictions on hours or operation, the type or amount of material combusted, stored, or processed, or similar parameters.

(19) (20) "Timely" means:

- (a) for initial permit submittals under Rule .0506 of this Section, before the end of the time period specified for submittal of an application for the respective Standard Industrial Classification;
- (b) for a new facility, one year after commencing operation;
- (c) for renewal of a permit previously issued under this Section, nine months before the expiration of that permit;
- (d) for a minor modification under Rule .0515 of this Section, before commencing the modification;
- (e) for a significant modification under Rule .0516 of this Section where the change would not contravene or conflict with a condition in the existing permit, 12 months after commencing operation;
- (f) for reopening for cause under Rule .0517 of this Section, as specified by the Director in the request for additional information by the Director; or
- (g) for requests for additional information, as specified by the Director in the request for additional information by the Director; or
- (h) for modifications made under Section 112(j) of the federal Clean Air Act, 18 months after EPA fails to promulgate a standard for that category of source under Section 112 of the federal Clean Air Act by the date established pursuant to Section 112(e)(1) or (3) of the federal Clean Air Act.

Statutory Authority G.S. 143-215.3(a)(1); 143-212; 143-213.

#### .0507 APPLICATION

(a) Except for:

- (1) minor permit modifications covered under Rule .0515 of this Section,
- (2) significant modifications covered under Rule .0516(c) of this Section, or
- (3) permit applications submitted under Rule .0506 of this Section,

the owner or operator of a source shall have one year from the date of beginning of operation of the source to file a complete application for a permit or permit revision.

However, the owner or operator of the source shall not begin construction or operation until he has obtained a construction and operation permit pursuant to Rule .0501(c) or (d) and Rule .0504 of this Section.

(b) The application shall include all the information described in 40 CFR 70.5(c), including a list of insignificant activities exempted because of size or production rate under Rule .0102(b)(2) of this Subchapter, but not including insignificant activities exempted because of category under Rule .0102(b)(1) of this Subchapter. The application form shall be certified by a responsible official for truth, accuracy, and completeness. In the application submitted pursuant to this Rule, the applicant may attach copies of applications submitted pursuant to Section .0400 of this Subchapter or 15A NCAC 2D .0530 or .0531, provided the information in those applications contains information required in this Section and is current, valid, and complete.

(c) Application for a permit, permit revision, or permit renewal shall be made in accordance with Rule .0104 of this Subchapter on official forms of the Division and shall include plans and specifications giving all necessary data and information as required by the application form. Whenever the information provided on these forms does not describe the source or its air pollution abatement equipment to the extent necessary to evaluate the application, the Director may request that the applicant provide any other information that the Director considers necessary to evaluate the source and its air pollution abatement equipment.

(d) Along with filing a complete application form, the applicant shall also file the following:

- (1) for a new facility or an expansion of existing facility, a consistency determination in accordance with G.S. 143-215.108(f) that:
  - (A) bears the date of receipt entered by the clerk of the local government, or
  - (B) consists of a letter from the local government indicating that all zoning or subdivision ordinances are met by the facility;
- (2) for a new facility or modification of an existing facility, a written description of current and projected plans to reduce the emissions of air contaminants by source reduction and recycling in accordance with G.S. 143-215.108(g); the description shall include:
  - (A) for an existing facility, a summary of activities related to source reduction and recycling and a quantification of air emissions reduced and material recycled during the previous year and a summary of plans for further source reduction and recycling; or
  - (B) for a new facility, a summary of activities related to and plans for source reduction and recycling; and
- (3) if required by the Director, information showing that:
  - (A) The applicant is financially qualified to carry out the permitted activities, or

(B) The applicant has substantially complied with the air quality and emissions standards applicable to any activity in which the applicant has previously been engaged, and has been in substantial compliance with federal and state environmental laws and rules.

(e) The applicant shall submit copies of the application package as follows:

- (1) for sources subject to the requirements of 15A NCAC 2D .0530, .0531, or .1200, six copies plus one additional copy for each affected state that the Director has to notify;
- (2) for sources not subject to the requirements of 15A NCAC 2D .0530, .0531, or .1200, four copies plus one additional copy for each affected state that the Director has to notify.

The Director may at any time during the application process request additional copies of the complete application package from the applicant.

(f) Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, submit, as soon as possible, such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date he filed a complete application but prior to release of a draft permit.

(g) The applicant shall submit the same number of copies of additional information as required for the application package.

(h) The submittal of a complete permit application shall not affect the requirement that any facility have a preconstruction permit under 15A NCAC 2D .0530, .0531, or .0532 or under Section .0400 of this Subchapter.

(i) The Director shall give priority to permit applications containing early reduction demonstrations under Section 112(f)(1)(5) of the federal Clean Air Act. The Director shall take final action on such permit applications as soon as practicable after receipt of the complete permit application.

(j) With the exceptions specified in Rule .0203 (i) of this Subchapter, a non-refundable permit application processing fee shall accompany each application. The permit application processing fees are defined in Section .0200 of this Subchapter. Each permit or renewal application is incomplete until the permit application processing fee is received.

(k) The applicant shall retain for the duration of the permit term one complete copy of the application package and any information submitted in support of the application package.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108.

#### .0508 PERMIT CONTENT

(a) The permit shall specify and reference the origin and authority for each term or condition and shall identify any

differences in form as compared to the applicable requirement on which the term or condition is based.

(b) The permit shall specify emission limitations and standards, including operational requirements and limitations, that assure compliance with all applicable requirements at the time of permit issuance.

(c) Where an applicable requirement of the federal Clean Air Act is more stringent than an applicable requirement of rules promulgated pursuant to Title IV, both provisions shall be placed in the permit. The permit shall state that both provisions are enforceable by EPA.

(d) The permit for sources using an alternative emission limit established under 15A NCAC 2D .0501(f) or 15A NCAC 2D .0952 shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

(e) The expiration date contained in the permit shall be for a fixed term of five years for sources covered under Title IV and for a term of no more than five years from the date of issuance for all other sources including solid waste incineration units combusting municipal waste subject to standards under Section 129(e) of the federal Clean Air Act.

(f) The permit shall contain monitoring and related recordkeeping and reporting requirements as specified in 40 CFR 70.6(a)(3) and 70.6(c)(1) including conditions requiring:

- (1) the permittee to retain records of all required monitoring data and supporting information for a period of at least five years from the date of the monitoring sample, measurement, report, or application (Supporting information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring information, and copies of all reports required by the permit.);
- (2) the permittee to submit reports of any required monitoring at least every six months. The permittee shall submit reports:
  - (A) on official forms obtained from the Division at the address in Rule .0104 of this Subchapter,
  - (B) in a manner as specified by a permit condition, or
  - (C) on such other forms as approved by the Director; and
- (3) the permittee to report malfunctions, emergencies, and other upset conditions as prescribed in 15A NCAC 2D .0524, ~~.0525, or .0535~~ .0535, ~~.1110, or .1111~~ and to report by the next business day deviations from permit requirements or any excess emissions not covered under 15A NCAC 2D .0524, ~~.0525, or .0535~~ .0535, ~~.1110, or .1111~~. The permittee shall report in writing to either the Director or Regional Supervisor all other deviations from permit requirements not covered under 15A NCAC 2D .0535 within two business days after becoming aware of the

deviation. The permittee shall include the probable cause of such deviation and any corrective actions or preventive measures taken. All deviations from permit requirements shall be certified by a responsible official.

Where appropriate, the Director may allow records to be maintained in computerized form. Monitoring, recordkeeping, and reporting shall not be required for insignificant activities except to the extent necessary to comply with Rule .0207 of this Subchapter.

(g) If the facility is required to develop and register a risk management plan pursuant to Section 112(r) of the federal Clean Air Act, the permit need only specify that the owner or operator of the facility will comply with the requirement to register such a plan. The content of the risk management plan need not itself be incorporated as a permit term or condition.

(h) The permit shall contain a condition prohibiting emissions exceeding any allowances that a facility lawfully holds under Title IV. The permit shall not limit the number of allowances held by a permittee, but the permittee may not use allowances as a defense to noncompliance with any other applicable requirement.

(i) The permit shall contain a severability clause so that various permit requirements will continue to be valid in the event of a challenge to any other portion of the permit.

(j) The permit shall state that noncompliance with any condition of the permit is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

(k) The permit shall state that the permittee may not use as a defense in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

(l) The permit shall state that the Director may reopen, modify, revoke and reissue, or terminate the permit for reasons specified in Rule .0517 or .0519 of this Section. The permit shall state that the filing of a request by the permittee for a permit revision, revocation and reissuance, or termination, notification of planned changes, or anticipated noncompliance does not stay any permit condition.

(m) The permit shall state that the permit does not convey any property rights of any sort, or any exclusive privileges.

(n) The permit shall state that the permittee shall furnish to the Division, in a timely manner, any reasonable information that the Director may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. The permit shall state that the permittee shall furnish the Division copies of records required to be kept by the permit when such copies are requested by the Director. For information claimed to be confidential, the permittee may furnish such records directly to EPA along with a claim of confidentiality.

(o) The permit shall contain a provision to ensure that the permittee pays fees required under Section .0200 of this

Subchapter.

(p) The permit shall state the terms and conditions for reasonably anticipated operating scenarios identified by the applicant in the application. These terms and conditions shall:

- (1) require the permittee, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the operating scenario under which it is operating;
- (2) extend the permit shield described in Rule .0512 of this Section to all terms and conditions under each such operating scenario; and
- (3) ensure that each operating scenario meets all applicable requirements of Subchapter 2D of this Chapter and of this Section.

(q) The permit shall identify which terms and conditions are enforceable by:

- (1) both EPA and the Division;
- (2) the Division only;
- (3) EPA only; and
- (4) citizens under the federal Clean Air Act.

(r) The permit shall state that the permittee shall allow personnel of the Division to:

- (1) enter the permittee's premises where the permitted facility is located or emissions-related activity is conducted, or where records are kept under the conditions of the permit;
- (2) have access to and copy, at reasonable times, any records that are required to be kept under the conditions of the permit;
- (3) inspect at reasonable times and using reasonable safety practices any source, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and
- (4) sample or monitor substances or parameters, using reasonable safety practices, for the purpose of assuring compliance with the permit or applicable requirements at reasonable times.

(s) When a compliance schedule is required under 40 CFR 70.5(c)(8) or under a rule contained in Subchapter 2D of this Chapter, the permit shall contain the compliance schedule and shall state that the permittee shall submit at least semiannually, or more frequently if specified in the applicable requirement, a progress report. The progress report shall contain:

- (1) dates for achieving the activities, milestones, or compliance required in the compliance schedule, and dates when such activities, milestones, or compliance were achieved; and
- (2) an explanation of why any dates in the compliance schedule were not or will not be met, and any preventive or corrective measures adopted.

(t) The permit shall contain requirements for compliance certification with the terms and conditions in the permit, including emissions limitations, standards, or work prac-

tices. The permit shall specify:

- (1) the frequency (not less than annually or more frequently as specified in the applicable requirements or by the Director) of submissions of compliance certifications;
- (2) a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;
- (3) a requirement that the compliance certification include:
  - (A) the identification of each term or condition of the permit that is the basis of the certification;
  - (B) the compliance status as shown by monitoring data and other information reasonably available to the permittee;
  - (C) whether compliance was continuous or intermittent;
  - (D) the method(s) used for determining the compliance status of the source, currently and over the reporting period; and
  - (E) such other facts as the permit may specify to determine the compliance status of the source;
- (4) that all compliance certifications be submitted to EPA as well as to the Division; and
- (5) such additional requirements as may be specified under Sections 114(a)(3) or 504(b) of the federal Clean Air Act.

(u) The permit shall contain a condition that authorizes the permittee to make Section 502(b)(10) changes, off-permit changes, or emission trades in accordance with Rule .0523 of this Section.

(v) The permit shall include all applicable requirements for all sources covered under the permit.

(w) The permit shall specify the conditions under which the permit shall be reopened before the expiration of the permit.

(x) If regulated, fugitive emissions shall be included in the permit in the same manner as stack emissions.

(y) The permit shall contain a condition requiring annual reporting of actual emissions as required under Rule .0207 of this Subchapter.

(z) The permit shall not include sources for which there are no applicable requirements.

(aa) The permit shall not include insignificant activities.

(bb) The permit may contain such other provisions as the Director considers appropriate.

*Statutory Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(10); 143-215.108.*

**.0526 CASE-BY-CASE MACT PROCEDURES**

(a) The owner or operator of a source required to apply maximum achievable control technology (MACT) under 15A NCAC 2D .1109 shall follow the permit procedures set out in this Rule.

(b) For the purposes of this Rule, the definitions in 15A NCAC 2D .1109 and the following definitions apply:

(1) "Equivalent emission limitation" means an emission limitation established under Section 112(j) of the federal Clean Air Act, which is at least as stringent as the MACT standard that EPA would have promulgated under Section 112(d) or (h) of the federal Clean Air Act.

(2) "Source category schedule for standards" means the schedule for promulgating MACT standards issued pursuant to Section 112(e) of the federal Clean Air Act.

(c) Except as provided for in Paragraph (d) or (e) of this Rule, the owner or operator of a source required to apply MACT under 15A NCAC 2D .1109 shall submit an application for a permit or for a significant permit revision under this Section, whichever is applicable.

(d) The owner or operator of an existing source required to apply MACT under 15A NCAC 2D .1109 that already has received a permit under this Section requiring compliance with a limit that would meet the requirements of 15A NCAC 2D .1109 shall submit an application for an administrative permit amendment.

(e) The owner or operator of a new source required to apply MACT under 15A NCAC 2D .1109 that currently complies with a federally enforceable alternative emission limitation, or has received a permit under this Section that already contains emission limitations substantively meeting the requirements of 15A NCAC 2D .1109, shall submit an application for an administrative permit amendment confirming compliance with the requirements of 15A NCAC 2D .1109 within 30 days after the date construction or reconstruction is commenced.

(f) If the Director disapproves a permit application submitted under this Rule or determines that the application is incomplete, the owner or operator shall revise and resubmit the application to meet the Director's objections not later than six months after first receiving notification that the application has been disapproved or is incomplete.

(g) If the owner or operator of a source subject to this Rule has submitted a timely and complete application for a permit, significant permit revision, or administrative amendment required by this Rule, any failure to have this permit will not be a violation of the requirements of this Rule unless the delay in final action is due to the failure of the applicant to submit, in a timely manner, information required or requested to process the application.

(h) The permit shall contain:

- (1) an equivalent emission limitation (or limitations) to control the emissions of hazardous air pollutant for that category or subcategory determined on a case-by-case basis;
- (2) any emission limits, production limits, operational limits or other terms and conditions necessary to ensure federal enforceability of the MACT emission limitation;
- (3) any notification, performance testing, monitoring, reporting, and recordkeeping requirements; and

(4) a compliance date(s) by which the owner or operator of an existing source shall be in compliance with the MACT emission limitation not to exceed three years from the date of issuance of the permit (The owner or operator of a new source shall comply with a new source MACT level of control immediately upon issuance of a permit under this Section).

(i) Early reductions made pursuant to Section 112(i)(5)(A) of the federal Clean Air Act shall be achieved not later than the date on which the relevant standard should have been promulgated according to the source category schedule for standards.

(j) A permit application for a MACT determination shall demonstrate how the source will obtain the degree of emission reduction that would have been obtained had the relevant emission standard been promulgated according to the source category schedule for standards for the source category of which the source is a member and all the other pertinent information required under 40 CFR 63.53.

(k) The Director shall follow 40 CFR 63.55(b) in reviewing permit applications for MACT.

(l) The following requirements apply to case-by-case determinations of equivalent emission limitations when a MACT standard is subsequently promulgated:

- (1) If EPA promulgates an emission standard that is applicable to one or more sources within a major facility before the date a proposed permit under this Rule is approved, the permit shall contain the promulgated standard rather than the emission limitation determined under 15A NCAC 2D .1109, and the owner or operator of the source shall comply with the promulgated standard by the compliance date in the promulgated standard.
- (2) If EPA promulgates an emission standard that is applicable to a source after the date that a permit is issued under this Rule, the Director shall revise the permit on its next renewal to reflect the promulgated standard. (Subparagraph (a)(1) of Rule .0517 of this Section does not apply to requirements established under this Rule.) The Director shall establish a compliance date in the revised permit that assures that the owner or operator shall comply with the promulgated standard within a reasonable time, but no longer than eight years after such standard is promulgated or eight years after the date by which the owner or operator was first required to comply with the emission limitation established by permit, whichever is earlier.
- (3) Notwithstanding the requirements of Subparagraphs (1) or (2) of this Paragraph, if EPA promulgates an emission standard that is applicable to a source after the date a proposed permit is approved, the Director need not change the emission limitation in the permit to reflect the promulgated standard if the level of control

required by the emission limitation in the permit is at least as stringent as that required by the promulgated standard.

Statutory Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108.

## CHAPTER 7 - COASTAL MANAGEMENT

### SUBCHAPTER 7H - STATE GUIDELINES FOR AREAS OF ENVIRONMENTAL CONCERN

#### SECTION .0100 - INTRODUCTION AND GENERAL COMMENTS

**N**otice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - NC Coastal Resources Commission intends to amend rule 15A NCAC 7H .0106. New definition of the term "structure" as used in CRC rules. The term "structure" is used numerous times in the Coastal Resources Commission's rules but is not defined in such a way as to apply consistently throughout all Sections of Subchapter 7H. It is proposed to define buildings, roads, piers, mooring pilings, breakwaters, etc. as structures. The agency will subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of the public hearing and of any comments received on the subject matter.

**Proposed Effective Date:** April 1, 1996.

**A Public Hearing** will be conducted at 4:00 pm on January 25, 1996 at the Sheraton Hotel, Salter Path Road, Atlantic Beach, NC.

**Reason for Proposed Action:** Need for consistent use and understanding of the term in the CRC's rules.

**Comment Procedures:** All persons interested in this matter are invited to attend the public hearing. The Coastal Resources Commission will receive mailed written comments postmarked no later than January 25, 1996. Any person desiring to present lengthy comments is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. Additional information concerning the hearing or the proposals may be obtained by contacting Kris M. Horton, Division of Coastal Management, PO Box 27687, Raleigh, NC 27611-7687, (919) 733-2293.

### SUBCHAPTER 7L - LOCAL PLANNING AND MANAGEMENT GRANTS

**N**otice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - NC Coastal Resources Commission intends to amend rules in 15A NCAC 7L. The purpose of these rules is to establish the criteria and procedures for the Department's program of grants for local land use planning and management within North Carolina's

coastal area. The proposed amendments will set revised priorities for awarding local planning and management grants to local governments in the coastal area. The agency will subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of the public hearing and of any comments received on the subject matter.

**Proposed Effective Date:** April 1, 1996.

**A Public Hearing** will be conducted at 4:00 pm on January 25, 1996 at the Sheraton Hotel, Salter Path Road, Atlantic Beach, NC.

**Reason for Proposed Action:** The Governor's Coastal Futures Committee (CFC) and Coastal Resources Commission (CRC) have both recommended amending the funding priorities to reflect current local government planning and management objectives. The rules have not been updated in several years.

**Comment Procedures:** All persons interested in this matter are invited to attend the public hearing. The Coastal Resources Commission will receive mailed written comments postmarked no later than January 25, 1996. Any person desiring to present lengthy comments is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. Additional information concerning the hearing or the proposals may be obtained by contacting Kris M. Horton, Division of Coastal Management, PO Box 27687, Raleigh, NC 27611-7687, (919) 733-2293.

### SUBCHAPTER 7M - GENERAL POLICY GUIDELINES FOR THE COASTAL AREA

**N**otice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - NC Coastal Resources Commission intends to adopt rules in 15A NCAC 7M .0300. The proposed rule revises the general policy guidelines for storefront access in the coastal area. The purpose of these rules is to express general policy guidelines for storefront access in the coastal area as well as the criteria and procedures for local government participation in the Public Beach and Coastal Waterfront Access Program. The agency will subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of the public hearing and of any comments received on the subject matter.

**Proposed Effective Date:** April 1, 1996.

**A Public Hearing** will be conducted at 4:00 pm on January 25, 1996 at the Sheraton Hotel, Salter Path Road, Atlantic Beach, NC.

**Reason for Proposed Action:** To amend the Coastal Resources Commission's storefront access guidelines to reflect recent trends in the demand for storefront access as well as changes in the enabling legislation (NCGS 113A-

134.1 et. seq.) enacted by the 1995 Session of the General Assembly.

**Comment Procedures:** All persons interested in this matter are invited to attend the public hearing. The Coastal Resources Commission will receive mailed written comments postmarked no later than January 25, 1996. Any person desiring to present lengthy comments is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. Additional information concerning the hearing or the proposals may be obtained by contacting Kris M. Horton, Division of Coastal Management, PO Box 27687, Raleigh, NC 27611-7687, (919) 733-2293.

## SECTION .0400 - COASTAL ENERGY POLICIES

**N**otice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - NC Coastal Resources Commission intends to adopt/amend rules in 15A NCAC 7M .0400. **Amendments to Coastal Energy Policies.** This is an amendment to coastal energy policies to clarify siting criteria for energy facilities located in the coastal zone. The amendment adds drillships, drilling platforms and on-shore support structures to the definition of energy facilities. The agency will subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of the public hearing and of any comments received on the subject matter.

**Proposed Effective Date:** February 1, 1997.

**A Public Hearing** will be conducted at 4:00 p.m. on September 26, 1996 at the Coast Line Convention Center, 501 Nutt Street, Wilmington, NC.

**Reason for Proposed Action:** The state needs to clarify existing policy statements pertaining to energy production in the coastal region, especially for exploration and production on the Outer Continental Shelf. The proposed amendments will clarify for applicants the criteria necessary for siting energy facilities. These are the policies and the criteria the state will use to review proposed facilities and activities for consistency with the state's coastal management program.

**Comment Procedures:** All persons interested in this matter are invited to attend the public hearing. The Coastal Resources Commission will receive mailed written comments postmarked no later than October 26, 1996. Any person desiring to present lengthy comments is requested to submit a written statement for inclusion in the record of proceedings at the public hearing. Additional information concerning the hearing or the proposals may be obtained by contacting Kris M. Horton, Division of Coastal Management, P.O. Box 27687, Raleigh, NC 27611-7687, (919) 733-2293.

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**N**otice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - NC Wildlife Resources Commission intends to amend rule cited as 15A NCAC 10B .0115.

**Proposed Effective Date:** July 1, 1996.

**A Public Hearing** will be conducted at 10:00 a.m. on December 18, 1995 at the Archdale Building, Room 332, 512 N. Salisbury Street, Raleigh, NC 27604.

**Reason for Proposed Action:** Rule has been replaced by Chapter 13, 1989 Session Laws.

**Comment Procedures:** Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from November 15, 1995 - January 2, 1996. Such written comments must be delivered or mailed to the NC Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, NC 27604-1188.

**Fiscal Note:** This Rule does not affect the expenditures or revenues of state or local government funds.

## CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

### SUBCHAPTER 10B - HUNTING AND TRAPPING

#### SECTION .0100 - GENERAL REGULATIONS

##### .0115 SHINING LIGHTS IN DEER AREAS

(a) It having been found upon sufficient evidence that certain areas frequented by deer are subject to substantial unlawful night deer hunting, or that residents in such areas have been greatly inconvenienced by persons shining lights on deer, or both, the shining of lights on deer in such areas is limited by Paragraphs (b) and (c) of this Rule, subject to the exceptions contained in Paragraph (d) of this Rule.

(b) No person shall, between the hours of 11:00 p.m. and one-half hour before sunrise, intentionally shine a light upon a deer or intentionally sweep a light in search of deer in the indicated portions of the following counties:

- (1) Beaufort -- entire county;
- (2) Bladen -- entire county;
- (3) Brunswick -- entire county;
- (4) Camden -- entire county;
- (5) Chowan -- entire county;
- (6) Currituck -- entire county;
- (7) Duplin -- entire county;
- (8) Franklin -- entire county;
- (9) Gates -- entire county;
- (10) Greene -- entire county;
- (11) Hertford -- entire county;
- (12) Hoke -- entire county;
- (13) Hyde -- entire county;

(14) Jones -- entire county;  
(15) Lenoir -- entire county;  
(16) Martin -- entire county;  
(17) Nash -- entire county;  
(18) Pamlico -- entire county;  
(19) Pasquotank -- entire county;  
(20) Pender -- entire county;  
(21) Perquimans -- entire county;  
(22) Pitt -- entire county;  
~~(23) Richmond -- entire county;~~  
~~(23) (24) Sampson -- entire county;~~  
~~(24) (25) Tyrrell -- entire county;~~  
~~(25) (26) Vance -- entire county;~~  
~~(26) (27) Wake -- entire county;~~  
~~(27) (28) Warren -- entire county;~~  
~~(28) (29) Washington -- entire county;~~  
~~(29) (30) Wayne -- entire county.~~

(c) No person shall, between the hours of one-half hour after sunset and one-half hour before sunrise, intentionally shine a light upon a deer or intentionally sweep a light in search of deer in the indicated portions of the following counties:

(1) Alamance -- entire county;  
(2) Alexander -- entire county;  
(3) Alleghany -- entire county;  
(4) Anson -- entire county;  
(5) Ashe -- entire county;  
(6) Avery -- that portion south and east of Highway 221;  
(7) Buncombe County -- entire county;  
(8) Burke -- entire county;  
(9) Cabarrus -- entire county;  
(10) Caswell -- entire county;  
(11) Catawba -- entire county;  
(12) Chatham -- entire county;  
(13) Clay -- entire county;  
(14) Cleveland -- entire county;  
(15) Cumberland -- entire county;  
(16) Davidson -- entire county;  
(17) Davie -- entire county;  
(18) Durham -- entire county;  
(19) Edgecombe -- entire county;  
(20) Forsyth County -- entire county;  
(21) Gaston -- entire county;  
(22) Granville -- entire county;  
(23) Guilford -- entire county;

(24) Halifax -- entire county;  
(25) Harnett -- entire county;  
(26) Henderson -- entire county;  
(27) Iredell -- entire county;  
(28) Johnston -- entire county;  
(29) Lee -- entire county;  
(30) Lincoln -- entire county;  
(31) Macon -- entire county;  
(32) McDowell -- entire county;  
(33) Mecklenburg -- entire county;  
(34) Mitchell -- entire county;  
(35) Montgomery -- entire county;  
(36) Northampton -- entire county;  
(37) Orange County -- entire county;  
(38) Person -- entire county;  
(39) Polk -- entire county;  
(40) Randolph -- entire county;  
(41) Robeson County -- entire county;  
(42) Rockingham -- entire county;  
(43) Rowan -- entire county;  
(44) Rutherford -- entire county;  
(45) Stanly -- entire county;  
(46) Stokes -- entire county;  
(47) Surry -- entire county;  
(48) Swain -- entire county;  
(49) Transylvania -- entire county;  
(50) Union -- entire county;  
(51) Watauga -- entire county;  
(52) Yancey -- entire county.

(d) Paragraphs (b) and (c) of this Rule shall not be construed to prevent:

(1) the lawful hunting of raccoon or opossum during open season with artificial lights designed or commonly used in taking raccoon and opossum at night;  
(2) the necessary shining of lights by landholders on their own lands;  
(3) the shining of lights necessary to normal travel by motor vehicles on roads or highways; or  
(4) the use of lights by campers and others who are legitimately in such areas for other reasons and who are not attempting to attract or to immobilize deer by the use of lights.

*Statutory Authority G.S. 113-134; 113-291.1; S.L. 1981, c. 410; S.L. 1981 (Second Session 1982), c. 1180.*

\* \* \* \* \*

**N**otice is hereby given in accordance with G.S. 150B-21.2 that the NC Wildlife Resources Commission intends to amend rules cited as 15A NCAC 10B .0116, .0201 - .0203, .0208 - .0209, .0214, .0220, .0302 - .0303; 10C .0205, .0301 - .0302, .0305, .0401, .0404, .0407; 10D .0002 - .0004; and adopt 15A NCAC 10B .0220.

Proposed Effective Date: July 1, 1996.

A Public Hearings will be conducted at 7:00 pm on the following dates and locations:

## PROPOSED RULES

District	Date	Location	City
1	February 5, 1996	Swain Auditorium	Edenton
2	February 6, 1996	Courthouse	New Bern
3	February 7, 1996	Courthouse	Nashville
4	January 29, 1996	Courthouse	Elizabethtown
5	January 30, 1996	Courthouse	Graham
6	January 31, 1996	North Stanly High School	Albemarle
7	January 24, 1996	Starmount High School	Booneville
8	January 22, 1996	Morganton Civic Center Auditorium	Morganton
9	January 23, 1996	Courthouse	Sylva

### Reason for Proposed Action:

15A NCAC 10B .0116 - to regulate/restrict use of archery equipment in hunting.

15A NCAC 10B .0201 - to regulate/restrict the taking of game and non-game animals.

15A NCAC 10B .0202 - to regulate/restrict taking of bear.

15A NCAC 10B .0203 - to regulate/restrict the taking of white-tailed deer.

15A NCAC 10B .0208 - to regulate/restrict taking of quail.

15A NCAC 10B .0209 - to regulate/restrict taking of wild turkey (bearded turkeys only).

15A NCAC 10B .0214 - to regulate/restrict the taking of wildcat (bobcat).

15A NCAC 10B .0220 - to regulate/restrict hunting of various species.

15A NCAC 10B .0302 - to regulate/restrict the open seasons for taking furbearing animals, coyotes, and groundhogs.

15A NCAC 10B .0303 - to set bag limits for various fur bearing animals, groundhogs and coyotes.

15A NCAC 10C .0205 - to restrict/regulate the taking of trout in public mountain trout waters.

15A NCAC 10C .0301 - to classify and designate american shad and hickory shad as inland game fishes.

15A NCAC 10C .0302 - to regulate/restrict taking of inland game fishes in certain waters of the roanoke river.

15A NCAC 10C .0305 - to set creel and size limits for game and non-game inland fishes.

15A NCAC 10C .0401 - to add lakes to the list of Community Fishing Program lakes with established size and creel limits for catfishes.

15A NCAC 10C .0404 - editorial changes to clarify and simplify rule requiring that all fixed and drift gill nets be attended in certain counties and establish restrictions for using eel pots in inland fishing waters.

15A NCAC 10C .0407 - editorial changes to conform with prior substantive changes.

15A NCAC 10D .0002, .0003 - to regulate/restrict the activities on game lands.

15A NCAC 10D .0004 - to delete requirement that one must possess a game lands license to fish designated public mountain trout waters on game lands and prohibit fishing in newly stocked game lands ponds when posted against fishing.

**Comment Procedures:** Interested persons may present their views either orally or in writing at the hearings. In addition, the record of hearing will be open for receipt of written comments from November 15, 1995 through February 7, 1996. Such written comments must be delivered or mailed to the NC Wildlife Resources Commission, 512 N. Salisbury Street, Raleigh, NC 27604-1188.

**Fiscal Note:** These Rules do not affect the expenditures or revenues of state or local government funds.

## SUBCHAPTER 10B - HUNTING AND TRAPPING

### SECTION .0100 - GENERAL REGULATIONS

#### .0116 PERMITTED ARCHERY EQUIPMENT

(a) Only longbows, recurved bows, and compound bows having a minimum pull of 45 pounds may be used for taking game. It is unlawful to use a crossbow or any other type of bow equipped with any device by which the bow can be set at full or partial pull and released by a trigger or any similar mechanism without a disabled sportsman's crossbow hunting permit issued by the Executive Director.

(b) Only arrows with a fixed minimum broadhead width of seven-eighths of an inch or a mechanically opening broadhead with a width of at least seven-eighths inch in the open position and that do not mechanically open upon impact may be used for taking bear, deer, wild boar or wild turkey. Blunt-type arrow heads may be used in taking small animals and birds including, but not limited to, rabbits, squirrels, quail, grouse and pheasants. Poisonous, drugged, barbed, or explosive arrowheads may not be used for taking any game.

(c) Crossbows used under a disabled sportsman's crossbow permit must have a minimum pull rated at least 150 pounds.

Heads on bolts used with crossbows used must conform to those described for arrows in Paragraph (b) of this Rule.

*Statutory Authority G.S. 113-134; 113-291.1(a); 113-297(b).*

## **SECTION .0200 - HUNTING**

### **.0201 PROHIBITED TAKING AND MANNER OF TAKE**

(a) It is unlawful for any person to take, or have in possession, any wild animal or wild bird listed in this Section except during the open seasons and in accordance with the limits herein prescribed, or as prescribed by 15A NCAC 10B .0300 pertaining to trapping or 15A NCAC 10D applicable to game lands managed by the Wildlife Resources Commission, unless otherwise specifically permitted by law. Lawful seasons and bag limits for each species apply beginning with the first day of the listed season and continue through the last day of the listed season, with all dates being included except Sundays. On military installations under the exclusive jurisdiction of the federal government the open seasons include Sundays. When any hunting season ends on a January 1 that falls on a Sunday, that season is extended to Monday, January 2.

(b) Those animals not classified as game animals in G.S. 113-129(7c), and for which a season is set under this Section, may be taken during the hours and methods authorized for taking game animals.

Note: Where local laws govern hunting, or are in conflict with these regulations, the local law shall prevail.

*Statutory Authority G.S. 103-2; 113-134; 113-291.2; 113-291.3; 113-291.1(a).*

### **.0202 BEAR**

(a) Open Seasons shall be from the:

(1) Monday on or nearest October 15 to the Saturday before Thanksgiving and the third Monday after Thanksgiving to January 1 in and west of the boundary formed by NC 16 from the Virginia State line to Wilkesboro and NC 18 from Wilkesboro to the South Carolina State line.

(2) Second Monday in November to the following Saturday and the third Monday after Thanksgiving to the following Wednesday in all of Beaufort, Camden, Dare, Gates, Hyde, Pamlico, Pasquotank, Tyrrell, and Washington counties; and in the following parts of counties:

Bertie: that part southeast of US 17.

Chowan: that part north of a line formed by SR 1002, SR 1222 and SR 1221.

Craven: except Game Lands.

Currituck: except Knotts Island and the Outer Banks.

Hertford: that part east of NC 45.

Martin: that part east of US 17.

Jones: except Game Lands.

(3) Second Monday in November to January 1 in all of Bladen, Carteret, Duplin, New Hanover, Onslow and Pender counties; and in the following parts of counties:

Carteret: except Game Lands.

Cumberland: that part south of NC 24 and east of the Cape Fear River.

Sampson: that part south of NC 24.

(4) Second Monday in December to January 1 in Brunswick and Columbus counties.

(b) No Open Season. There is no open season in any area not included in Paragraph (a) of this Rule or in those parts of counties included in the following posted bear sanctuaries:

Avery, Burke and Caldwell counties--Daniel Boone bear sanctuary

Beaufort, Bertie and Washington counties--Bachelor Bay bear sanctuary

Beaufort and Pamlico counties--Gum Swamp bear sanctuary

Bladen County--Suggs Mill Pond bear sanctuary

Brunswick County--Green Swamp bear sanctuary

Buncombe, Haywood, Henderson and Transylvania counties--Pisgah bear sanctuary

Carteret, Craven and Jones counties--Croatan bear sanctuary

Clay County--Fires Creek bear sanctuary

Currituck County--North River bear sanctuary

Dare County--Bombing Range bear sanctuary

Haywood County--Harmon Den bear sanctuary

Haywood County--Sherwood bear sanctuary

Hyde County--Gull Rock bear sanctuary

Hyde County--Pungo River bear sanctuary

Jackson County--Panthertown-Bonas Defeat bear sanctuary  
Jones and Onslow counties--Hofmann bear sanctuary  
Macon County--Standing Indian bear sanctuary  
Macon County--Wayah bear sanctuary  
Madison County--Rich Mountain bear sanctuary  
McDowell and Yancey counties--Mt. Mitchell bear sanctuary  
Mitchell and Yancey counties--Flat Top bear sanctuary  
Wilkes County--Thurmond Chatham bear sanctuary

(c) Bag limits shall be:

- (1) daily, one;
- (2) possession, one;
- (3) season, one.

(d) Kill Reports. The carcass of each bear shall be tagged and the kill reported as provided by 15A NCAC 10B .0113.

*Statutory Authority G.S. 113-134; 113-291.2; 113-291.7; 113-305.*

**.0203 DEER (WHITE-TAILED)**

(a) Closed Season. All counties and parts of counties not listed under the open seasons in Paragraph (b) in this Rule are closed to deer hunting.

(b) Open Seasons (All Lawful Weapons)

(1) Male Deer With Visible Antlers. Male deer with antlers or spikes protruding through the skin, as distinguished from knobs or buttons covered by skin or velvet, may be taken during the following seasons:

(A) Monday on or nearest October 15 to January 1 in the following counties and parts of counties:

Beaufort	Edgecombe	Nash	Scotland**
Bertie	Franklin	New Hanover	Tyrrell
Bladen	Gates	Northhampton	Vance
Brunswick	Greene	Onslow	Wake
Camden	Halifax	Pamlico	Warren
Carteret	Hertford	Pasquotank	Washington
Chowan	Hoke	Pender	Wayne
Columbus*	Hyde	Perquimans	Wilson
Craven	Johnston	Pitt	
Currituck	Jones	Richmond**	
Dare	Lenoir	Robeson	
Duplin	Martin	Sampson	

Cumberland: That part south of NC 24 or east of I-95.

Harnett: That part west of NC 87.

Moore\*\*: All of the county except that part north of NC 211 and west of US 1.

\*Unlawful to hunt or kill deer in Lake Waccamaw or within 50 yards of its shoreline.

\*\*See 15A NCAC 10D .0003(e)(2) for seasons on Sandhills Game Land.

(B) Monday of Thanksgiving week to third Saturday after Thanksgiving Day in the following counties and parts of counties:

Alexander	Davie	Lincoln	Wilkes
Alleghany	Forsyth	Stokes	Yadkin
Ashe	Gaston	Surry	
Catawba	Iredell	Watauga	

(C) Monday of Thanksgiving week to third Saturday after Thanksgiving Day in the following counties and parts of counties:

Avery	Clay	Jackson	Polk
Buncombe	Cleveland	Macon	Rutherford
Burke	Graham	Madison	Swain
Caldwell	Haywood	McDowell	Transylvania

Cherokee

Henderson

Mitchell

Yancey

(D) Monday before Thanksgiving week to January 1 in the following counties and parts of counties:

Alamance  
Anson  
Cabarrus  
Caswell  
Chatham

Davidson  
Durham  
Granville  
Guilford  
Lee

Mecklenburg  
Montgomery  
Orange  
Person  
Randolph

Rockingham  
Rowan  
Stanly  
Union

Cumberland: That part north of NC 24 and west of I-95.

Harnett: That part east of NC 87.

Moore: That part north of NC 211 and west of US 1.

(E) Monday on or nearest September 10 to January 1 in those parts of Camden, Gates and Pasquotank counties known as the Dismal Swamp National Wildlife Refuge, and in that part of Currituck County known as the Mackay Island National Wildlife Refuge.

(2) Deer of Either Sex. Deer of either sex may be taken during the open seasons and in the counties and portions of counties listed in this Subparagraph:

(A) The open either-sex deer hunting dates established by the U.S. Fish and Wildlife Service during the period from the Monday on or nearest September 10 to January 1 in those parts of Camden, Gates and Pasquotank counties known as the Dismal Swamp National Wildlife Refuge and in that part of Currituck County known as the Mackay Island National Wildlife Refuge and from the first Saturday in October to January 1 in those parts of Hyde, Tyrrell and Washington counties known as the Pocosin Lakes National Wildlife Refuge Refuge, in those parts of Camden, Gates and Pasquotank counties known as the Dismal Swamp National Wildlife Refuge, and in that part of Currituck County known as the Mackay Island National Wildlife Refuge and those parts of Anson and Richmond counties known as Pee Dee National Wildlife Refuge.

(B) The open either-sex deer hunting dates established by the appropriate military commands during the period from Monday on or nearest October 15 to January 1 in that part of Brunswick County known as the Sunny Point Military Ocean Terminal, in that part of Craven County known and marked as Cherry Point Marine Base, in that part of Onslow County known and marked as the Camp Lejeune Marine Base, on Fort Bragg Military Reservation, and on Camp Mackall Military Reservation.

(C) Second Saturday in October for youth either sex deer hunting by permit only on a designated portion of Belews Creek Steam Station in Stokes County.

(D) The second Saturday in December in all of Buncombe, ~~Catawba, Gaston, Haywood, Henderson, Lincoln, Madison, Mitchell, Transylvania, and Yancey~~ counties and the following parts of counties:

Avery: That part south of the Blue Ridge Parkway.

(E) Wednesday to Saturday of the week following Thanksgiving in all of Harnett, Hoke, Mecklenburg, Tyrrell, and Union counties and in the following parts of counties:

~~Cabarrus: That part west of US 52 and east of I-85.~~

Cumberland: That part west of I-95.

Dare: except the Outer Banks north of Whalebone.

Richmond: That part east of a line formed by US 220 from the Montgomery County line to Rockingham and US 1 from Rockingham to the South Carolina line, except on game lands.

~~Rowan: That part west of US 52.~~

Scotland: That part north of US 74 except game lands.

~~Wayne: That part north of US 70.~~

(F) Wednesday of the week following Thanksgiving to Saturday of next succeeding week in all of Alamance, ~~Cabarrus, Caswell, Camden, Greene, Guilford, Lee, Pasquotank, Person, Rockingham, Rowan, Stanly, and Washington~~ counties and in the following parts of counties:

~~Cabarrus: That part east of US 52.~~

Carteret: All of the county except game lands.

Chowan: That part north of US 17 and west of NC 32.

Columbus: That part west of US 74, SR 1005, and SR 1125.

Cumberland: That part east of I-95.

Currituck: All of the county except the Outer Banks.

Davidson: Except on game lands southeast of NC 49.

Durham: All of the county except on game lands.

Johnston: That part north of US 70 or west of I-95.  
Moore: All of the county except Sandhills Game Land.  
Nash: That part south of US 64.  
Orange: All of the county except on game lands.  
Randolph: All of the county except on game lands.  
Richmond: That part east of Little River and west of a line formed by US 220 from the Montgomery County line to Rockingham and US 1 from Rockingham to the South Carolina line.  
Robeson: That part east of I-95.  
~~Rowan: That part east of US 52.~~  
Wake: All of the county except on game lands.  
Wayne: That part south north of US 70.  
(G) Monday of Thanksgiving week to the third Saturday after Thanksgiving Day in that part of Buncombe County east of NC 191, south of the French Broad and Swannanoa Rivers, west of US 25, and north of SR 3503, NC 280 and SR 3501.  
(H) Wednesday of the week following Thanksgiving to January 1 in all of Brunswick, Edgecombe, Franklin, Gates, Hertford, Lenoir, Northampton, Perquimans, Pitt, Sampson, Vance, and Warren counties, and in the following parts of counties:  
Anson: All of the county except game lands.  
Beaufort: All of the county except game lands.  
Bertie: All of the county except Bachelor Bay Game Land, Roanoke River Wetlands and Roanoke River National Wildlife Refuge.  
Bladen: All of the county except game lands.  
Chatham: All of the county except game lands.  
Chowan: That part south of US 17 or east of NC 32.  
Columbus: That part east of a line formed by US 74, SR 1005, and SR 1125.  
Craven: All of the county except game lands.  
Dare: That part of the Outer Banks north of Whalebone.  
Duplin: All of the county except game lands.  
Granville: All of the county except game lands.  
Halifax: All of the county except Roanoke River Wetlands.  
Hyde: All of the county except game lands.  
Johnston: That part south of US 70 and east of I-95.  
Jones: All of the county except game lands.  
Martin: All of the county except Roanoke River Wetlands.  
Montgomery: All of the county except game lands.  
Nash: That part north of US 64.  
New Hanover: That part north of US 74, except game lands.  
Onslow: All of the county except game lands.  
Pamlico: All of the county except game lands.  
Pender: All of the county except game lands.  
Richmond: That part west of Little River.  
Wayne: That part south of US 70.  
(I) The second Wednesday after Thanksgiving to the third Saturday after Thanksgiving in all of Alexander, Alleghany, Ashe, Cleveland, Davie, Forsyth, Iredell, Rutherford, Stokes, Surry, Wilkes and Yadkin counties.  
(J) The third Friday after Thanksgiving to the third Saturday after Thanksgiving in all of Burke, Caldwell, Catawba, Gaston, Lincoln, McDowell, Polk, and Watauga counties.  
(K) In those counties or parts of counties listed in Paragraph (b) (2) (H), except on game lands, two antlerless deer may be taken during that part of the regular gun season in which no other either sex season is open and must be tagged with the Antlerless deer tag or the Bonus Antlerless deer tag.  
(L) In those counties or parts of counties listed in Part (b)(2)(F), except on game lands, one antlerless deer may be taken during that part of the regular gun season in which no other either-sex season is open and must be tagged with the Antlerless deer tag.  
(M) In Alexander, Alleghany, Ashe, Davie, Forsyth, Iredell, Stokes, Surry, Wilkes, and Yadkin counties except on Game Lands, one antlerless deer may be taken during that part of the regular gun season and that part of the muzzle-loading season in which no other either-sex season is open and must be tagged with the Antlerless deer tag.  
(3) Game Lands Either-Sex Hunts. On the hunt dates indicated, deer of either sex may be taken by permittees

engaged in managed hunts conducted on game lands in accordance with 15A NCAC 10D .0003(e)(4) and (5).

(c) Open Seasons (Bow and Arrow)

(1) Authorization. Subject to the restrictions set out in Subparagraph (2) of this Paragraph and the bag limits set out in Paragraph (e) of this Rule, deer of either sex may be taken with bow and arrow during the following seasons:

- (A) Monday on or nearest September 10 to the fourth Saturday thereafter in the counties and parts of counties having the open season for male deer specified by Part (A) of Subparagraph (b)(1) of this Rule, except on the Sandhills Game Land and the area known as the Outer Banks in Currituck County.
- (B) Monday on or nearest September 10 to the second Saturday before Thanksgiving in the counties and parts of counties having the open seasons for male deer specified by Part (B) of Subparagraph (b)(1) of this Rule.
- (C) Monday on or nearest September 10 to the fourth Saturday thereafter, and Monday on or nearest October 15 to the Saturday before Thanksgiving in the counties and parts of counties having the open seasons for male deer specified by Part (C) of Subparagraph (b)(1) of this Rule.
- (D) Monday on or nearest September 10 to the third Saturday before Thanksgiving in the counties and parts of counties having the open season for male deer specified by Part (D) of Subparagraph (b)(1) of this Rule, and on Sandhills Game Land.

(2) Restrictions

- (A) Dogs may not be used for hunting deer during the bow and arrow season.
- (B) It is unlawful to carry any type of firearm while hunting with a bow during the bow and arrow deer hunting season.
- (C) Only bows and arrows of the types authorized in 15A NCAC 10B .0116 for taking deer may be used during the bow and arrow deer hunting season.

(d) Open Seasons (Muzzle-Loading Rifles and Shotguns)

(1) Authorization. Subject to the restrictions set out in Subparagraph (2) of this Paragraph, deer may be taken only with muzzle-loading firearms (except that bow and arrow may be used on designated and posted game land Archery Zones) during the following seasons:

- (A) Monday on or nearest October 8 to the following Saturday in the counties and parts of counties having the open seasons for male deer specified by Items (A) and (C) of Subparagraph (b)(1) of this Rule, except on Sandhills Game Land and the area known as the Outer Banks in Currituck County.
- (B) Monday to Saturday of the week preceding Thanksgiving week in the counties and parts of counties having the open seasons for male deer specified by Item (B) of Subparagraph (b)(1) of this Rule.
- (C) Monday to Saturday of the second week before Thanksgiving week in the counties and parts of counties having the open season for male deer specified by Part (D) of Subparagraph (b)(1) of this Rule, and on Sandhills Game Land.

(2) Restrictions

- (A) Deer of either sex may be taken during muzzle-loading firearms season in those counties or parts of counties listed in Parts (A) and (D) of Subparagraph (b) (1) of this Rule and deer of either sex may be taken on the last day of muzzle-loading firearms season in those counties or parts of counties listed in Part (B) and (C) of Subparagraph (b) (1) of this Rule.
- (B) Dogs may not be used for hunting deer during the muzzle-loading firearms seasons.
- (C) Pistols may not be carried while hunting deer during the muzzle-loading firearms seasons.

(e) Bag Limits: Daily, two; possession, five, one of which must be antlerless; season, five, one of which must be antlerless. In those areas listed in Part (b)(2)(I)(H) of this Rule, except on Game Lands, one additional antlerless deer may be taken provided it is tagged with the Bonus Antlerless deer tag. Antlerless deer include males with knobs or buttons covered by skin or velvet as distinguished from spikes protruding through the skin. The antlerless bag limits described in this Rule do not apply to antlerless deer harvested in areas covered in the Deer Management Assistance Program as described in G.S. 113-291.2(e). Individual daily antlerless bag limits on these areas are determined by the number of special tags, issued by the Division of Wildlife Management as authorized by the Executive Director, that are in the possession of the hunter. Season antlerless bag limits are set by the number of tags available. All antlerless deer harvested on these areas, regardless of the date of harvest, must be tagged with these special tags but do not have to be tagged with Big Game Tags provided with the hunting license.

(f) Kill Reports. The carcass of each deer shall be tagged and the kill reported as provided by 15A NCAC 10B .0113.

*Statutory Authority G.S. 113-134; 113-270.3; 113-276.1; 113-291.1; 113-291.2.*

**.0208 QUAIL**

- (a) Open Season: Saturday next preceding Thanksgiving to the last day of February.
- (b) Bag Limits: Daily, 8 40; possession, 16 20; season, no limit.

Statutory Authority G.S. 113-134; 113-291.2.

**.0209 WILD TURKEY (BEARDED TURKEYS ONLY)**

(a) Open Season shall be from the:

Second Saturday in April to Saturday of the fourth week thereafter on bearded turkeys in the following counties: Alleghany, Ashe, Buncombe, Caswell, Cherokee, Clay, Gates, Graham, Haywood, Henderson, Hertford, Jackson, Macon, Madison, McDowell, Mitchell, Montgomery, Onslow, Orange, Person, Polk, \*\*Richmond, Rockingham, Rutherford, \*\*Scotland, Stokes, Surry, Swain, Transylvania, Watauga, Wilkes, and in the following portions of counties:

Alamance: All of the county except that part south of I-85 and west of NC 87.

Avery: That part west of US-19E.

Anson: That part east of US 52 and north of US 74 and that part east of NC 145 and south of US 74.

**\*\*** Bertie: That part west of a line formed by NC 45 from the Hertford County line to Colerain, NC 42 to Powellsville, US 13 to US 17 South, US 17 South to SR 1500, SR 1500 to NC 308, and NC 308 to the Washington County line.

**\*\*** Bladen: That part south of US 701 and east of NC 87 or SR 1730.

Brunswick: That part north of US 74-76 or east of NC 133.

Burke: That part north of I-40 and west of NC 18 and NC 181.

Carteret: That part west of US 70 and north of NC 24.

Chatham: That part north of US 64 and west of SR 1008.

Chowan: That part south of US-17.

Cleveland: That part west of NC 18.

Columbus: That part north of NC 87.

Craven: That part east of US 17, south of the Neuse River and west of Clubfoot Creek and the Harlowe Canal; and that part north of the Neuse River, south of a line formed by US 17 and US 17 Business, and east of a line formed by SR 1440 and SR 1441.

Durham: That part west of US 501.

Granville: All of the county except that part west of a line formed by SR 1126 from the county line to the intersection of SR 1004 then west on SR 1004 to the intersection of SR 1112 then east on SR 1112 to NC 56 then east on NC 56 to I-85 then south on I-85 to the county line.

**\*\*** Halifax: Starting at the Northampton County Line, that part east and north of a line formed by I-95, NC 903 and US 301.

Hoke: That part south and west of NC 211.

Hyde: Starting at the Tyrrell County line, that part west of a line formed by NC 94, US 264 West, SR 1124 to Judges Quarter then Quarter Canal to Juniper Bay.

Johnston: That part south of US 70 and I-95 and east of US 701.

Jones: Starting at the Craven County line, that part south of a line formed by US-17, SR 1002, and SR 1306. That part east of US 17 and north of SR 1004; and starting at the Onslow County line, that part south of a line formed by US 17, NC 58, and SR 1105.

**\*\*** Martin: That part north of a boundary formed by US 64 from the Washington County line to Williamston, north of NC 125 from Williamston to the junction with NC 142, and north of NC 142 to the Edgecombe County line.

McDowell: That part north of US 70 and that part south of I-40.

Mitchell: That part north and west of a boundary formed by NC 197, NC 226, and NC 261.

Montgomery: All of the county except that part north of NC 24/27 and east of NC 134.

**\*\*** Moore: That part south of NC 211.

New Hanover: Starting at the Brunswick County line, that part north and west of a line formed by NC-133 and SR 1002. That part west of NC 133.

Northampton: That part south of a boundary formed by US 158 from the Halifax County line to Jackson, NC 305 from Jackson to Rich Square, US 258 from Rich Square to NC 308, and NC 308 to the Bertie County line and that part south of NC 186, east of SR 1341, and north of SR 1333 and SR 1351.

**\*\*** Pender: Starting at the Sampson County line, that part south and west of a line formed by US 421, NC 210, and US-17 South NC 133; and starting at the Onslow county line, that part south of NC 53, east of the Northeast Cape Fear River, and north of the northern boundary of Holly Shelter Game Land and US 17.

Perquimans: Starting at the Pasquotank County line, that part south of a line formed by US-17, US-17 Business, and SR 1110.

**\*\*** Richmond: All of the county except that part south of US 74 and east of US 1.

Union: That part south of NC 74 and west of NC 207.

Wayne: That part south of US-70 and east of US-117.

Yancey: All of the county except that part north of US 19E and east of NC 197.

\*\* The Sandhills Game Land in Richmond, Scotland, and Moore Counties, the Bladen Lakes State Forest Game Lands in Bladen County, the Northeast Cape Fear Wetlands Game Lands in Pender County, and the Roanoke River Wetlands in Bertie, Halifax, and Martin Counties are closed to turkey hunting except by holders of special permits authorizing turkey hunting as provided in G.S. 113-264(d).

(b) Bag Limits shall be:

- (1) daily, one;
- (2) possession, two;
- (3) season, two.

(c) Dogs Prohibited. It is unlawful to use dogs for hunting turkeys.

(d) Kill Reports. The carcass of each wild turkey shall be tagged and the kill reported as provided by 15A NCAC 10B .0113.

*Statutory Authority G.S. 113-134; 113-270.3; 113-276.1; 113-291.2.*

#### **.0214 WILDCAT (BOBCAT)**

(a) Open Seasons: The Monday on or nearest October 15 through the last day in February.

(1) ~~Third Monday after Thanksgiving to January 31 in and west of Stokes, Forsyth, Davie, Iredell, Mecklenburg and Union Counties, except there is no open season in the following parts of counties:~~

~~Cherokee: That part north of US 64 and NC 294, east of Persimmon Creek and Hiwassee Lake, south of Hiwassee Lake, and west of Nottely River.~~

~~Madison: That part north of the French Broad River, south of US 25-70, and west of SR 1319.~~

(2) ~~The Monday on or nearest October 15 through the last day in February in all other counties.~~

(b) Bag Limits: No restriction.

*Statutory Authority G.S. 113-134; 113-291.2.*

#### **.0220 NUTRIA**

(a) No closed season.

(b) Bag Limits: No restriction.

*Statutory Authority G.S. 113-134; 113-291.2; 113-291.1(a).*

### **SECTION .0300 - TRAPPING**

#### **.0302 OPEN SEASONS**

(a) General. Subject to the restrictions set out in Paragraph (b) of this Rule, the following seasons for taking furbearing animals as defined in G.S. 113-129(7a), coyotes, and groundhogs shall apply as indicated, all dates being inclusive:

- (1) November 7-February 12 in and west of Surry, Wilkes, Alexander, Catawba, Burke and Cleveland Counties.
- (2) December 15-February 28 in and east of Hertford, Bertie, Martin, Pitt, Greene, Lenoir, Duplin, Pender and New Hanover Counties, except that in the marshes adjoining Currituck Sound in Currituck County the season is December 15-March 12 and nutria may not be shot at any time (day or night) during the open season for migratory waterfowl.
- (3) December 1-February 20 in all other counties.

(b) Restrictions

- (1) It is unlawful to trap or take otter in and west of Stokes, Forsyth, Davie, Iredell, and Mecklenburg Counties.
- (2) It is unlawful to set steel traps for muskrat or mink in and west of Surry, Wilkes, Alexander, Catawba, Burke and Cleveland Counties except in or adjacent to the waters of lakes, streams or ponds.
- (3) It is unlawful to trap raccoon in Yadkin County and in and west of Surry, Wilkes, Alexander, Catawba, Lincoln and Gaston Counties.

Note: See 15A NCAC 10D .0002(f) for other trapping restrictions on game lands.

*Statutory Authority G.S. 113-134; 113-291.1; 113-291.2.*

#### **.0303 BAG LIMITS**

**(a) Raccoon.**

- (1) In and east of Rockingham, Guilford, Randolph, Montgomery and Anson Counties, the season limit is 30 raccoons taken by trapping.
- (2) In Cabarrus, Davidson, Davie, Forsyth, Iredell, Mecklenburg, Rowan, Stanly, Stokes and Union Counties, the season limit for raccoons taken by trapping is 20.

**(b) Other Furbearers. Furbearers, coyotes, and groundhogs: No restriction.**

Note: Where local laws govern trapping, or are in conflict with these regulations, the local law shall prevail.

*Statutory Authority G.S. 113-134; 113-291.2.*

**SUBCHAPTER 10C - INLAND FISHING REGULATIONS**

**SECTION .0200 - GENERAL REGULATIONS**

**.0205 PUBLIC MOUNTAIN TROUT WATERS**

(a) Designation of Public Mountain Trout Waters. The waters listed herein or in 15A NCAC 10D .0004 are designated as Public Mountain Trout Waters and further classified as Wild Trout Waters or Hatchery Supported Waters. For specific classifications, see Subparagraphs (1) and (2) of Paragraph (a) of this Rule. These waters are posted and lists thereof are filed with the clerks of superior court of the counties in which they are located:

- (1) Hatchery Supported Trout Waters. The listed waters in the counties in Subparagraphs (1)(A)-(Y) are classified as Hatchery Supported Public Mountain Trout Waters. Where specific watercourses or impoundments are listed, indentation indicates that the watercourse or impoundment listed is tributary to the next preceding watercourse or impoundment listed and not so indented. This classification applies to the entire watercourse or impoundment listed except as otherwise indicated in parentheses following the listing. Other clarifying information may also be included parenthetically. The tributaries of listed watercourses or impoundments are not included in the classification unless specifically set out therein, only the confluence of the tributaries and the designated mainstem also lies. Otherwise, Wild Trout regulations apply to the tributaries.

**(A) Alleghany County:**

New River (not trout water)

Little River (Whitehead to McCann Dam)

Crab Creek

Brush Creek (except where posted against trespass)

Big Pine Creek

Laurel Branch

Big Glade Creek

Bledsoe Creek

Pine Swamp Creek

Waterfalls Creek (South Fork Little River)(except where posted against trespass)

South Fork New River (not trout water)

Prather Creek

Cranberry Creek

Piney Fork

Meadow Fork

Yadkin River (not trout water)

Roaring River (not trout water)

East Prong Roaring River (that portion on Stone Mountain State Park) Delayed Harvest Waters regulations apply. See Subparagraph (5) of Paragraph (a) of this Rule.

**(B) Ashe County:**

New River (not trout waters)

North Fork New River (Watauga Co. line to Sharp Dam)

Helton Creek (Virginia State line to New River)

Big Horse Creek (SR 1361 bridge to Tuckerdale)

Buffalo Creek (headwaters to junction of NC 194-88 and SR 1131)

Big Laurel Creek

Three Top Creek (portion not on game lands)

Hoskins Fork (Watauga County line to North Fork New River)

South Fork New River (not trout waters)

Cranberry Creek (Alleghany County line to South Fork New River)

Nathans Creek

Peak Creek (headwaters to Trout Lake, except Blue Ridge Parkway waters)

Trout Lake (Delayed harvest regulations apply. See Subparagraph (5) of Paragraph (a) of this Rule.)

Roan Creek

North Beaver Creek

South Beaver Creek (headwaters to Ashe Lake)

Pine Swamp Creek (all forks)

Old Fields Creek

Mill Creek (except where posted against trespass)

(C) Avery County:

Nolichucky River (not trout waters)

North Toe River (headwaters to Mitchell County line, except where posted against trespass)

~~Plumtree Creek~~

Squirrel Creek

Elk River (SR 1306 crossing to Tennessee State line, including portions of tributaries on game lands)

Catawba River (not trout water)

Johns River (not trout water)

Wilson Creek [not Hatchery Supported trout water, see Subparagraph (2) of Paragraph (a) of this Rule]

Lost Cove Creek [not Hatchery Supported trout water, see Subparagraph (4) of Paragraph (a) of this Rule]

Gragg Prong (including tributaries)

Webb Prong (including tributaries)

Buck Timber Creek [not Hatchery Supported trout water, see Subparagraph (2) of Paragraph (a) of this Rule]

Cary Flat Branch [not Hatchery Supported trout water, see Subparagraph (2) of Paragraph (a) of this Rule]

Boyde Coffey Lake

Archie Coffey Lake

Linville River (~~Sleep Dam~~ ~~Land Harbor line (below dam)~~ to Blue Ridge Parkway boundary line) line, except where posted against trespass

Milltimber Creek

~~Linville River~~ ~~Land Harbor line (below dam)~~ to Ben Aldridge line, except Bob Miller property

(D) Buncombe County:

French Broad River (not trout water)

Big Ivy Creek (Ivy River) (Dillingham Creek to US 19-23 bridge)

Dillingham Creek (Corner Rock Creek to Big Ivy Creek)

Stony Creek

Mineral Creek (including portions of tributaries on game lands)

Corner Rock Creek (including tributaries, except Walker Branch)

Reems Creek (Sugar Camp Fork to US 19-23 bridge, except where posted against trespass)

Swannanoa River (SR 2702 bridge near Ridgecrest to Sayles Bleachery in Asheville, except where posted against trespass)

Bent Creek (headwaters to N.C. Arboretum boundary line, including portions of tributaries on game lands)

Lake Powhatan

Cane Creek (headwaters to SR 3138 bridge)

(E) Burke County:

Catawba River (not trout water)

South Fork Catawba River (not trout water)

Henry Fork (lower Morganton watershed line downstream to SR 1919 at Ivy Creek)

Jacob Fork (Shinny Creek to lower South Mountain State Park boundary) Delayed Harvest

Regulations apply. See Subparagraph (a)(5) of this Rule.

Johns River (not trout water)

Parks Creek (portion not on game lands not trout water)

Carroll Creek (game lands portion above SR 1405 including tributaries)

Linville River (game lands portion below the Blue Ridge Parkway including portions of tributaries on game lands and from first bridge on SR 1223 below Lake James powerhouse to Muddy Creek)

**(F) Caldwell County:**

Catawba River (not trout water)  
Johns River (not trout water)  
Wilson Creek (Phillips Branch to Browns Mountain Beach dam, except where posted against trespass)  
Estes Mill Creek (not trout water)  
Thorpe Creek (falls to NC 90 bridge)  
Mulberry Creek (portion not on game lands not trout water)  
Boone Fork (not Hatchery Supported trout water. See Subparagraph (2) of Paragraph (a) of this Rule)  
Boone Fork Pond

**(G) Cherokee County:**

Hiwassee River (not trout water)  
Shuler Creek (headwaters to Tennessee line, except where posted against trespass including portions of tributaries on game lands)  
North Shoal Creek (Crane Creek) (headwaters to SR 1325, including portions of tributaries on game lands)  
Persimmon Creek  
Davis Creek (including portions of tributaries on game lands)  
Bald Creek (including portions of tributaries on game lands)  
Beaver Dam Creek (headwaters to SR 1326 bridge, including portions of tributaries on game lands)  
Valley River  
Hyatt Creek (including portions of tributaries on game lands)  
Webb Creek (including portions of tributaries on game lands)  
Junaluska Creek (Ashturn Creek to Valley River, including portions of tributaries on game lands)

**(H) Clay County:**

Hiwassee River (not trout water)  
Fires Creek (first bridge above the lower game land line on US Forest Service road 442 to SR 1300)  
Tusquitee Creek (headwaters to lower SR 1300 bridge, including portions of Bluff Branch on game lands)  
Tuni Creek (including portions of tributaries on game lands)  
Chatuge Lake (not trout water)  
Shooting Creek (headwaters to US 64 bridge at SR 1338)  
Hothouse Branch  
Vineyard Creek (including portions of tributaries on game lands)

**(I) Graham County:**

Little Tennessee River (not trout water)  
Calderwood Reservoir (Cheoah Dam to Tennessee State line)  
Cheoah River (not trout water)  
Yellow Creek  
Santeelah Reservoir (not trout water)  
West Buffalo Creek  
Huffman Creek (Little Buffalo Creek)  
~~Squalla Creek~~  
~~South Fork Squalla Creek~~  
Santeelah Creek (Johns Branch to mouth including portions of tributaries within this section located on game lands, excluding Johns Branch)  
Big Snowbird Creek (old railroad junction to mouth, including portions of tributaries on game lands)  
Mountain Creek (game lands boundary to SR 1138 bridge)  
Long Creek (portion not on game lands)  
Tulula Creek (headwaters to lower bridge on SR 1211)  
Franks Creek  
Cheoah Reservoir  
Fontana Reservoir (not trout water)  
Stecoah Creek  
Sawyer Creek  
Panther Creek (including portions of tributaries on game lands)

**(J) Haywood County:**

Pigeon River (not trout water)  
Hurricane Creek (including portions of tributaries on game lands)  
Cold Springs Creek (including portions of tributaries on game lands)

Jonathans Creek - lower (concrete bridge in Dellwood to Pigeon River)

Jonathans Creek - upper [SR 1302 bridge (west) to SR 1307 bridge]

Hemphill Creek

West Fork Pigeon River (headwaters to Champion International property line, including portions of tributaries within this section located on game lands, except Middle Prong)

Richland Creek (Russ Avenue bridge to US 19A-23 bridge) Delayed Harvest Regulations apply.

See Subparagraph (a)(5) of this Rule.

(K) Henderson County:

Broad River (not trout water)

Rocky Broad River (one-half mile north of Bat Cave to Rutherford County line)

Green River - upper (mouth of Bob Creek to mouth of Rock Creek)

Green River - lower (Lake Summit Dam to Polk County line)

Camp Creek (SR 1919 to Polk County line)

Big Hungry River

Little Hungry River

French Broad River (not trout water)

Mills River (not trout water)

North Fork Mills River (game lands portion below the Hendersonville watershed dam)

Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.

(L) Jackson County:

Tuckasegee River (confluence with West Fork Tuckasegee River to SR 1392 bridge at Wilmot) Delayed Harvest Regulations apply to that portion between NC 107 bridge at Love Field and NC 116 bridge at Webster. See Subparagraph (a)(5) of this Rule.

Scott Creek (entire stream, except where posted against trespass)

Dark Ridge Creek (Jones Creek to Scotts Creek)

Buff Creek (SR 1457 bridge below Bill Johnson's place to Scott Creek)

~~North Fork Scott Creek~~

Savannah Creek (Headwaters to Bradley's Packing House on NC 116)

Greens Creek (Greens Creek Baptist Church on SR 1730 to Savannah Creek)

Cullowhee Creek (Tilley Creek to Tuckasegee River)

Bear Creek Lake

Wolf Creek [not Hatchery Supported trout water, see Subparagraph (2) of Paragraph (a) of this Rule]

Wolf Creek Lake

Balsam Lake

Tanasee Creek [not Hatchery Supported trout water, see Subparagraph (2) of Paragraph (a) of this Rule]

Tanasee Creek Lake

West Fork Tuckasegee River (Shoal Creek to existing water level of Little Glendale Lake)

Shoal Creek (Glendale Reservoir pipeline to mouth)

(M) Macon County:

Little Tennessee River (not trout water)

Nantahala River (Nantahala Dam to Swain County line) Delayed Harvest Regulations apply to the portion from Whiteoak Creek to the Nantahala Power and Light powerhouse discharge canal. See Subparagraph (a)(5) of this Rule.

Queens Creek Lake

Burnington Creek (including portions of tributaries on game lands)

Cullasaja River (Sequoah Dam to US 64 bridge near junction of SR 1672, including portions of tributaries on game lands, excluding those portions of Big Buck Creek and Turtle Pond Creek on game lands. Wild trout regulations apply. See Subparagraphs (2) and (6) of Paragraph (a) of this Rule.)

Ellijay Creek (except where posted against trespass, including portions of tributaries on game lands)

Skitty Creek

Cliffside Lake

Cartoogechaye Creek (US 64 bridge to Little Tennessee River)

Tessentee Creek (Nichols Branch to Little Tennessee River, except where posted against trespassing)

Savannah River (not trout water)

Big Creek (base of falls to Georgia State line, including portions of tributaries within this Section located on game lands)

(N) Madison County:

French Broad River (not trout water)

Shut-In Creek (including portions of tributaries on game lands)

Spring Creek (junction of NC 209 and NC 63 to lower US Forest Service boundary line, including portions of tributaries on game lands)

Meadow Fork Creek

Roaring Fork (including portions of tributaries on game lands)

Little Creek

Max Patch Pond

Mill Ridge Pond

Big Laurel Creek (Mars Hill Watershed boundary to Rice's Mill Dam)

Shelton Laurel Creek (headwaters to NC 208 bridge)

Big Creek (headwaters to lower game land boundary, including tributaries)

Mill Creek

~~Spilleron Creek~~

Big Pine Creek

Puncheon Fork (Hampton Creek to Big Laurel Creek)

(O) McDowell County:

Catawba River (portion not on game lands, not trout water)

Buck Creek (portion not on game lands, not trout water)

Little Buck Creek (game land portion including portions of tributaries on game lands)

Curtis Creek (~~fish barrier~~ Newberry Creek to US 70 bridge)

North Fork Catawba River (headwaters to North Cove School, SR 1569)

Armstrong Creek (Cato Holler line downstream to upper Greenlee line)

Mill Creek (upper railroad bridge to U.S. 70 Bridge, except where posted against trespass)

(P) Mitchell County:

Nolichucky River (not trout water)

Big Rock Creek (headwaters to ~~fishing club property above A.D. Harrel farm~~ NC 226 bridge at SR 1307 intersection)

Little Rock Creek (Green Creek Bridge to Big Rock Creek, except where posted against trespass)

Cane Creek (SR 1219 to Nolichucky River)

Grassy Creek (East Fork Grassy Creek to mouth)

East Fork Grassy Creek

North Toe River (Avery County line to SR 1121, Altapass Road)

(Q) Polk County:

Broad River (not trout water)

North Pacolet River (Pacolet Falls to NC 108 bridge)

Fork Creek (Fork Creek Church on SR 1128 to North Pacolet River)

Big Fall Creek (portion above and below water supply reservoir)

Green River (Henderson County line to mouth of Brights Creek)

Little Cove Creek (including portions of tributaries on game lands)

Cove Creek (including portions of tributaries on game lands)

Camp Creek [Henderson County line (top of falls) to Green River]

Fulloms Creek (SR 1154 to Green River, including portions of tributaries on game lands)

(R) Rutherford County:

Broad River (not trout water)

Rocky Broad River (Henderson County line to head of rapids at Goose Pond Hole, except where posted against trespass)

(S) Stokes County:

Dan River (~~lower Flippin property line below SR 1416 bridge downstream to a point to 200 yards downstream from below the end of SR 1421~~)

(T) Surry County:

Yadkin River (not trout water)

Ararat River (SR 1727 downstream to the Business US 52 bridge) Delayed Harvest regulations apply. See Subparagraph (5) of Paragraph (a) of this Rule.

Stewart's Creek (not trout water)

Pauls Creek (Virginia State line to 0.3 mile below SR 1625 bridge - lower Caudle property line)

Fisher River (Cooper Creek) (Virginia State line to NC 89 bridge)

## **PROPOSED RULES**

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Little Fisher River (Virginia State line to NC 89 bridge)

(U) Swain County:

Little Tennessee River (not trout water)

Calderwood Reservoir (Cheoah Dam to Tennessee State line)

Cheoah Reservoir

Fontana Reservoir (not trout water)

Alarka Creek

Nantahala River (Macon County line to existing Fontana Reservoir water level)

Tuckasegee River (not trout water)

Deep Creek (Great Smoky Mountains National Park boundary line to Tuckasegee River)

Connelly Creek (including portions of tributaries on game lands)

(V) Transylvania County:

French Broad River (junction of west and north forks to US 276 bridge)

Davidson River (Avery Creek to Ecusta intake)

East Fork French Broad River (Gladys Branch to French Broad River)

Middle Fork French Broad River

West Fork French Broad River (SR 1312 and SR 1309 intersection to junction of west and north forks, including portions of tributaries within this section located on game lands)

Savannah River (not trout water)

Thompson River (SR 1152 to South Carolina state line, except where posted against trespass, including portions of tributaries within this section located on game lands)

(W) Watauga County:

New River (not trout waters)

North Fork New River (from confluence with Maine and Mine branches to Ashe County line)

Maine Branch (headwaters to North Fork New River)

South Fork New River (not trout water)

Meat Camp Creek

Norris Fork Creek

Howards Creek (downstream from lower falls)

Middle Fork New River (Lake Chetola Dam to South Fork New River)

Yadkin River (not trout water)

Stony Fork (headwaters to Wilkes County line)

Elk Creek (headwaters to gravel pit on SR 1508, except where posted against trespass)

Watauga River (SR 1559 at Foscoe downstream to NC 105 bridge) Delayed Harvest Regulations apply. See Subparagraph (5) of Paragraph (a) of this Rule.

Beech Creek

Buckeye Creek Reservoir

Coffee Lake

Laurel Creek

Cove Creek (SR 1233 bridge at Zionville to SR 1233 bridge at Amantha)

Dutch Creek (second bridge on SR 1134 to mouth)

Boone Fork (headwaters to SR 1562)

(X) Wilkes County:

Yadkin River (not trout water)

Roaring River (not trout water)

East Prong Roaring River (Bullhead Creek to Brewer's Mill on SR 1943) (Delayed harvest regulations apply to portion on Stone Mountain State Park) See Subparagraph (5) of Paragraph (a) of this Rule.

Stone Mountain Creek (Delayed Harvest Regulations apply. See Subparagraph (5) of Paragraph (a) of this Rule.)

Middle Prong Roaring River (headwaters to second bridge on SR 1736)

Harris Creek (end of SR 1716 to mouth)

Pell Branch Pond

Boundary Line Pond

West Prong Roaring River (not trout waters)

Pike Creek

Pike Creek Pond

Reddies River (not trout water)

Middle Fork Reddies River (Clear Prong) (headwaters to bridge on SR 1580)  
South Fork Reddies River (headwaters to NC 16 bridge)  
North Fork Reddies River (Vannoy Creek) (headwaters to Union School bridge on SR 1559)  
North Prong Reddies River (Darnell Creek) (downstream ford on SR 1569 to confluence with North Fork)

Lewis Fork Creek (not trout water)

South Prong Lewis Fork (headwaters to Lewis Fork Baptist Church)

Fall Creek (except portions posted against trespass)

(Y) Yancey County:

Nolichucky River (not trout water)

Cane River (~~Cattail Creek to Bowlens Creek~~) Bee Branch (SR 1110) to Bowlens Creek

Bald Mountain Creek (except portions posted against trespass)

Indian Creek (not trout water)

Price Creek (junction of SR 1120 and SR 1121 to Indian Creek)

North Toe River (not trout water)

South Toe River (Clear Creek to lower boundary line of Yancey County recreation park except where posted against trespass)

(2) Wild Trout Waters. All waters designated as Public Mountain Trout Waters on the game lands listed in Subparagraph (b)(2) of 15A NCAC 10D .0004, are classified as Wild Trout Waters unless specifically classified otherwise in (A)(1) of this Rule. The trout waters listed in this Subparagraph are also classified as Wild Trout Waters.

(A) Alleghany County:

Big Sandy Creek (portion on Stone Mountain State Park)

Ramey Creek (entire stream)

Stone Mountain Creek (that portion on Stone Mountain State Park)

(B) Ashe County:

Big Horse Creek (Virginia State Line to SR 1361 bridge) Catch and Release/Artificial Lures Only Regulations apply. See Subparagraph (a)(3) of this Rule.

(C) Avery County:

Birchfield Creek (entire stream)

Cow Camp Creek (entire stream)

Cranberry Creek (entire stream)

Horse Creek (entire stream)

Jones Creek (entire stream)

Kentucky Creek (entire stream)

North Harper Creek (entire stream)

Plumtree Creek (entire stream)

Roaring Creek (entire stream)

Rockhouse Creek (entire stream)

South Harper Creek (entire stream)

~~Wilson Creek (Catch and Release/Artificial Lures Only Regulations apply. See Subparagraph (a)(3) of this Rule.)~~

(D) Buncombe County:

Carter Creek (game land portion) (Catch and Release/Artificial Lures only regulations apply. See Subparagraph (3) of Paragraph (a) of this Rule.

(E) Burke County:

All waters located on South Mountain State Park, except the main stream of Jacob Fork between the mouth of Shinn Creek and the lower park boundary where delayed harvest regulations apply. See Subparagraph (5) of Paragraph (a) of this Rule.

(F) Caldwell County:

Buffalo Creek (headwaters to lower Dahl property line)

Joe Fork (Watauga County line to falls)

Rockhouse Creek (entire stream)

(G) Graham County:

South Fork Squalla Creek (entire stream)

Squalla Creek (entire stream)

(H) (G) Jackson County:

Gage Creek (entire stream)

North Fork Scott Creek (entire stream)

Tanasee Creek (entire stream)

Whitewater River (downstream from Silver Run Creek to South Carolina State line)

Wolf Creek (entire stream, except Balsam Lake and Wolf Creek Lake)

(I) Madison County

Spillcorn Creek (entire stream)

(J) (H) Mitchell County:

Green Creek (headwaters to Green Creek Bridge, except where posted against trespass)

Little Rock Creek (headwaters to Green Creek Bridge, including all tributaries, except where posted against trespass)

Wiles Creek (game land boundary to mouth)

(K) (H) Transylvania County:

Whitewater River (downstream from Silver Run Creek to South Carolina State line)

(L) (H) Watauga County:

Watauga River (Avery County line to SR 1559)

Boone Fork (Blue Ridge Parkway boundary line to Watauga River) [Catch and Release Fly Fishing Only regulations apply. See Subparagraph (4) of Paragraph (a) of this Rule.]

Dutch Creek (headwaters to second bridge on SR 1134)

Howards Creek (headwaters to lower falls)

Howards Creek (headwaters to lower falls)

Dutch Creek (headwaters to second bridge on SR 1134)

Watauga River (Avery County line to SR 1559)

(M) (K) Wilkes County:

Big Sandy Creek (portion on Stone Mountain State Park)

Garden Creek (portion on Stone Mountain State Park)

Harris Creek and tributaries [portions on Stone Mountain State Park] [Catch and Release Artificial Lures Only regulations apply. See Subparagraph (4) of Paragraph (a) of this Rule.]

Widow Creek (portion on Stone Mountain State Park)

(N) (L) Yancey County:

Lickskillet Creek (entire stream)

Middle Creek (game land boundary to mouth)

Rock Creek (game land boundary to mouth)

South Toe River (game land boundary downstream to Clear Creek)

(3) Catch and Release/Artificial Lures Only Trout Waters. Those portions of designated wild trout waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Catch and Release/Artificial Lures Only waters. Only artificial lures having one single hook may be used. No fish may be harvested or be in possession while fishing these streams:

(A) Ashe County:

Big Horse Creek (Virginia State line to SR 1361 bridge excluding tributaries)

Three Top Creek (portion located on Three Top Mountain Game Lands)

(B) Avery County:

Wilson Creek (game land portion)

(B) (G) Buncombe County:

Carter Creek (game land portion)

(C) (D) Jackson County:

Flat Creek

Tuckasegee River (upstream of Clarke property)

(D) (E) McDowell County:

Newberry Creek (game land portion)

(E) (F) Wilkes County:

Harris Creek (portion on Stone Mountain State Park)

(F) (G) Yancey County:

Lower Creek

Upper Creek

(4) Catch and Release/Artificial Flies Only Trout Waters. Those portions of designated wild trout waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Catch and Release/Fly Fishing

Only waters. Only artificial flies having one single hook may be used. No fish may be harvested or be in possession while fishing these streams:

- (A) Avery County:  
Lost Cove Creek (game land portion, excluding Gragg Prong and Rockhouse Creek)
- (B) Transylvania County:  
Davidson River (headwaters to Avery Creek, excluding Avery Creek, Looking Glass Creek and Grogan Creek)
- (C) Watauga County:  
Boone Fork (portion between Blue Ridge Parkway boundary and the Watauga River)
- (D) Yancey County:  
South Toe River (portion from the concrete bridge above Black Mountain Campgroup downstream to game land boundary, excluding Camp Creek and Neals Creek)

(5) Delayed Harvest Trout Waters. Those portions of designated Hatchery Supported Trout Waters as listed in this Subparagraph, excluding tributaries except as noted, are further classified as Delayed Harvest Waters. Between ~~1 March October~~ and one-half hour after sunset on the Friday before the first Saturday ~~in of the following~~ June, inclusive, it is unlawful to possess natural bait and only artificial lures with one single hook may be used. No fish may be harvested or be in possession while fishing these streams during this time. These waters are closed to fishing between one-half hour after sunset on the Friday before the first Saturday in June and 6:00 a.m. on the first Saturday in June. At 6:00 a.m. on the first Saturday in June these streams open for fishing under Hatchery Supported Waters regulations:

- (A) Ashe County:  
Trout Lake
- (B) Burke County:  
Jacob Fork (Shinny Creek to lower South Mountains State Park boundary)
- (C) Haywood County:  
Richland Creek (Russ Avenue bridge to US 19A-23 bridge)
- (D) Henderson County:  
North Fork Mills River (game land portion below the Hendersonville watershed dam)
- (E) Jackson County:  
Tuckasegee River (NC 107 bridge at Love Field Downstream to NC 116 bridge at Webster)
- (F) Macon County:  
Nantahala River (portion from Whiteoak Creek to the Nantahala Power and Light power house discharge canal)
- (G) Surry County:  
Ararat River (SR 1727 downstream to Business US 52 bridge)
- (H) Watauga County:  
Watauga River (SR 1559 bridge at Foscoe downstream to NC 105 bridge)
- (I) Wilkes County:  
East Prong Roaring River (from Bullhead Creek downstream to the Stone Mountain State Park lower boundary)  
Stone Mountain Creek (from falls at Allegheny County line to confluence with East Prong Roaring River and Bullhead Creek in Stone Mountain State Park)

(6) Wild Trout/Natural Bait Waters. Those portions of designated Wild Trout Waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Wild Trout/Natural Bait Waters. All artificial lures and natural baits, except live fish, are allowed provided they are fished using only one single hook. The creel limit, size limit, and open season are the same as other Wild Trout Waters [see 15A NCAC 10C .0305(a)].

- (A) Cherokee County:  
Tellico River (Fain Ford to Tennessee state line excluding tributaries)
- (B) Clay County:  
Buck Creek (game land portion downstream of US 64 bridge)
- (C) Graham County:  
Deep Creek  
Long Creek (game land portion)
- (D) Jackson County:  
Chattooga River (SR 1100 bridge to South Carolina state line)  
(lower) Fowler Creek (game land portion)  
Scotsman Creek (game land portion)
- (E) Macon County:  
Chattooga River (SR 1100 bridge to South Carolina state line)  
Jarrett Creek (game land portion)

Kimsey Creek  
Overflow Creek (game land portion)  
Park Creek  
Tellico Creek (game land portion)  
Turtle Pond Creek (game land portion)

(F) Transylvania County:

North Fork French Broad River (game land portions downstream of SR 1326)

(b) Fishing in Trout Waters

- (1) Hatchery Supported Trout Waters. It is unlawful to take fish of any kind by any manner whatsoever from designated public mountain trout waters during the closed seasons for trout fishing. The seasons, size limits, creel limits and possession limits apply in all waters, whether designated or not, as public mountain trout waters. Except in power reservoirs and city water supply reservoirs so designated, it is unlawful to fish in designated public mountain trout waters with more than one line. Night fishing is not allowed in most hatchery supported trout waters on game lands [see 15A NCAC 10D .0004(b)(1)].
- (2) Wild Trout Waters. Except as otherwise provided in Subparagraphs (3), (4), and (6) of Paragraph (a) of this Rule, the following rules apply to fishing in wild trout waters.
  - (A) Open Season. There is a year round open season for the licensed taking of trout.
  - (B) Creel Limit. The daily creel limit is four trout.
  - (C) Size Limit. The minimum size limit is seven inches.
  - (D) Manner of Taking. Only artificial lures having only one single hook may be used. No person shall possess natural bait while fishing wild trout waters except those waters listed in 15A NCAC 10C .0205(a)(6).
  - (E) Night Fishing. Fishing on wild trout waters is not allowed between one-half hour after sunset and one-half hour before sunrise.

Statutory Authority G.S. 113-134; 113-272; 113-292.

## SECTION .0300 - GAME FISH

### .0301 INLAND GAME FISHES DESIGNATED

The following fishes are classified and designated as inland game fishes:

- (1) mountain trout, all species including but not limited to rainbow, steelhead, golden, brown and brook trout;
- (2) muskellunge and tiger muskie;
- (3) chain pickerel (jack);
- (4) walleye;
- (5) black bass, including spotted, smallmouth and largemouth bass;
- (6) white bass;
- (7) spotted sea trout (speckled trout), when found in inland fishing waters;
- (8) flounder, when found in inland fishing waters;
- (9) red drum (channel bass, red fish, puppy drum), when found in inland fishing waters;
- (10) striped bass and Morone hybrids (striped bass-white bass), when found in inland fishing waters;
- (11) American shad, when found in inland fishing waters;
- (12) hickory shad, when found in inland fishing waters;
- (13) (11) kokanee salmon;
- (14) (12) Panfishes, including as a group, white perch and yellow perch (when found in inland fishing waters), crappie, warmouth, redbreast or robin, bluegill or bream, rock bass, redeye, sauger, and all other species of sunfish, perch and pickerel not specifically listed in this Rule.

Statutory Authority G.S. 113-134; 113-129.

### .0302 MANNER OF TAKING INLAND GAME FISHES

(a) Except as provided below, it is unlawful for any person to take inland game fishes from any of the waters of North Carolina by any method other than with hook and line. Landing nets may be used to land fishes caught on hook and line. Game fishes taken incidental to commercial fishing operations in joint fishing waters or coastal fishing waters shall be immediately returned to the water unharmed. Game fishes taken incidental to the use of licensed special devices for taking nongame fishes from inland fishing waters as authorized by 15A NCAC 10C .0407 shall be immediately returned to the water unharmed.

(b) In the inland waters of the Roanoke River upstream of U.S. 258 bridge, only a single barbless hook or a lure with

Only waters. Only artificial flies having one single hook may be used. No fish may be harvested or be in possession while fishing these streams:

- (A) Avery County:  
Lost Cove Creek (game land portion, excluding Gragg Prong and Rockhouse Creek)
- (B) Transylvania County:  
Davidson River (headwaters to Avery Creek, excluding Avery Creek, Looking Glass Creek and Grogan Creek)
- (C) Watauga County:  
Boone Fork (portion between Blue Ridge Parkway boundary and the Watauga River)
- (D) Yancey County:  
South Toe River (portion from the concrete bridge above Black Mountain Campgroup downstream to game land boundary, excluding Camp Creek and Neals Creek)

(5) Delayed Harvest Trout Waters. Those portions of designated Hatchery Supported Trout Waters as listed in this Subparagraph, excluding tributaries except as noted, are further classified as Delayed Harvest Waters. Between 1 ~~March~~ October and one-half hour after sunset on the Friday before the first Saturday ~~in~~ of the following June, inclusive, it is unlawful to possess natural bait and only artificial lures with one single hook may be used. No fish may be harvested or be in possession while fishing these streams during this time. These waters are closed to fishing between one-half hour after sunset on the Friday before the first Saturday in June and 6:00 a.m. on the first Saturday in June. At 6:00 a.m. on the first Saturday in June these streams open for fishing under Hatchery Supported Waters regulations:

- (A) Ashe County:  
Trout Lake
- (B) Burke County:  
Jacob Fork (Shinny Creek to lower South Mountains State Park boundary)
- (C) Haywood County:  
Richland Creek (Russ Avenue bridge to US 19A-23 bridge)
- (D) Henderson County:  
North Fork Mills River (game land portion below the Hendersonville watershed dam)
- (E) Jackson County:  
Tuckasegee River (NC 107 bridge at Love Field Downstream to NC 116 bridge at Webster)
- (F) Macon County:  
Nantahala River (portion from Whiteoak Creek to the Nantahala Power and Light power house discharge canal)
- (G) Surry County:  
Ararat River (SR 1727 downstream to Business US 52 bridge)
- (H) Watauga County:  
Watauga River (SR 1559 bridge at Foscoe downstream to NC 105 bridge)
- (I) Wilkes County:  
East Prong Roaring River (from Bullhead Creek downstream to the Stone Mountain State Park lower boundary)  
Stone Mountain Creek (from falls at Allegheny County line to confluence with East Prong Roaring River and Bullhead Creek in Stone Mountain State Park)

(6) Wild Trout/Natural Bait Waters. Those portions of designated Wild Trout Waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Wild Trout/Natural Bait Waters. All artificial lures and natural baits, except live fish, are allowed provided they are fished using only one single hook. The creel limit, size limit, and open season are the same as other Wild Trout Waters [see 15A NCAC 10C .0305(a)].

- (A) Cherokee County:  
Tellico River (Fain Ford to Tennessee state line excluding tributaries)
- (B) Clay County:  
Buck Creek (game land portion downstream of US 64 bridge)
- (C) Graham County:  
Deep Creek  
Long Creek (game land portion)
- (D) Jackson County:  
Chattooga River (SR 1100 bridge to South Carolina state line)  
(lower) Fowler Creek (game land portion)  
Scotsman Creek (game land portion)
- (E) Macon County:  
Chattooga River (SR 1100 bridge to South Carolina state line)  
Jarrett Creek (game land portion)

Kimsey Creek  
Overflow Creek (game land portion)  
Park Creek  
Tellico Creek (game land portion)  
Turtle Pond Creek (game land portion)

(F) Transylvania County:

North Fork French Broad River (game land portions downstream of SR 1326)

(b) Fishing in Trout Waters

- (1) Hatchery Supported Trout Waters. It is unlawful to take fish of any kind by any manner whatsoever from designated public mountain trout waters during the closed seasons for trout fishing. The seasons, size limits, creel limits and possession limits apply in all waters, whether designated or not, as public mountain trout waters. Except in power reservoirs and city water supply reservoirs so designated, it is unlawful to fish in designated public mountain trout waters with more than one line. Night fishing is not allowed in most hatchery supported trout waters on game lands [see 15A NCAC 10D .0004(b)(1)].
- (2) Wild Trout Waters. Except as otherwise provided in Subparagraphs (3), (4), and (6) of Paragraph (a) of this Rule, the following rules apply to fishing in wild trout waters.
  - (A) Open Season. There is a year round open season for the licensed taking of trout.
  - (B) Creel Limit. The daily creel limit is four trout.
  - (C) Size Limit. The minimum size limit is seven inches.
  - (D) Manner of Taking. Only artificial lures having only one single hook may be used. No person shall possess natural bait while fishing wild trout waters except those waters listed in 15A NCAC 10C .0205(a)(6).
  - (E) Night Fishing. Fishing on wild trout waters is not allowed between one-half hour after sunset and one-half hour before sunrise.

Statutory Authority G.S. 113-134; 113-272; 113-292.

## SECTION .0300 - GAME FISH

### .0301 INLAND GAME FISHES DESIGNATED

The following fishes are classified and designated as inland game fishes:

- (1) mountain trout, all species including but not limited to rainbow, steelhead, golden, brown and brook trout;
- (2) muskellunge and tiger muskie;
- (3) chain pickerel (jack);
- (4) walleye;
- (5) black bass, including spotted, smallmouth and largemouth bass;
- (6) white bass;
- (7) spotted sea trout (speckled trout), when found in inland fishing waters;
- (8) flounder, when found in inland fishing waters;
- (9) red drum (channel bass, red fish, puppy drum), when found in inland fishing waters;
- (10) striped bass and Morone hybrids (striped bass-white bass), when found in inland fishing waters;
- (11) American shad, when found in inland fishing waters;
- (12) hickory shad, when found in inland fishing waters;
- (13) kokanee salmon;
- (14) Panfishes, including as a group, white perch and yellow perch (when found in inland fishing waters), crappie, warmouth, redbreast or robin, bluegill or bream, rock bass, redeye, sauger, and all other species of sunfish, perch and pickerel not specifically listed in this Rule.

Statutory Authority G.S. 113-134; 113-129.

### .0302 MANNER OF TAKING INLAND GAME FISHES

(a) Except as provided below, it is unlawful for any person to take inland game fishes from any of the waters of North Carolina by any method other than with hook and line. Landing nets may be used to land fishes caught on hook and line. Game fishes taken incidental to commercial fishing operations in joint fishing waters or coastal fishing waters shall be immediately returned to the water unharmed. Game fishes taken incidental to the use of licensed special devices for taking nongame fishes from inland fishing waters as authorized by 15A NCAC 10C .0407 shall be immediately returned to the water unharmed.

(b) In the inland waters of the Roanoke River upstream of U.S. 258 bridge, only a single barbless hook or a lure with

a single barbless hook may be used from 1 April to 30 June. Barbless as used in this rule, requires that the hook does not have a barb or the barb is bent down.

Statutory Authority G.S. 113-134; 113-273; 113-292; 113-302.

**.0305 OPEN SEASONS: CREEL AND SIZE LIMITS**

(a) Generally. Subject to the exceptions listed in Paragraph (b) of this Rule, the open seasons and creel and size limits are as indicated in the following table:

**DAILY CREEL MINIMUM**

GAME FISHES	LIMITS	SIZE LIMITS	OPEN SEASON
Mountain Trout:			
Wild Trout Waters	4	7 in.	ALL YEAR (exc. 2)
Hatchery Supported Trout Waters and undesignated waters	7	None	All year, except March 1 to 6:00 a.m. on first Saturday in April (exc. 2)
Muskellunge and Tiger Musky	2	30 in.	ALL YEAR
Chain Pickerel (Jack)	None	None	ALL YEAR
Walleye	8 (excs. 8 & 9)	None	ALL YEAR (exc. 8)
Sauger	8	15 in.	ALL YEAR
Black Bass:			
Largemouth	5 (exc. 9)	14 in. (excs. 3, 7 & 10)	ALL YEAR (exc. 18)
Smallmouth and Spotted	5 (exc. 9)	12 in. (excs. 3, 7 & 10)	ALL YEAR
White Bass	25	None	ALL YEAR
Sea Trout (Spotted or Speckled)	10	12 in.	ALL YEAR
Flounder	None	13 in.	ALL YEAR
Red drum (channel bass, red fish, puppy drum)	5	18 in.	ALL YEAR
Striped Bass and their hybrids (Morone Hybrids)	8 aggregate (excs. 1 & 5)	16 in. (excs. 1, 5 & 11)	ALL YEAR (excs. 5, 13, & 15)
<u>Shad: (American</u>	<u>None</u>	<u>None</u>	<u>ALL YEAR</u>

and hickory)

Kokanee Salmon	7	None	ALL YEAR
Panfishes	None (excs. 4, 12, & 16)	None (exc. 12)	ALL YEAR (exc. 4)
NONGAME FISHES	None (exc. 14)	None (exc. 14)	ALL YEAR (excs. 6 & 17)

## (b) Exceptions

- (1) In the Dan River upstream from its confluence with Bannister River to the Brantly Steam Plant Dam, and in John H. Kerr, Gaston, and Roanoke Rapids Reservoirs, and Lake Norman, the creel limit on striped bass and Morone hybrids is four in the aggregate and the minimum size limit is 20 inches.
- (2) In designated public mountain trout waters the season for taking all species of fish is the same as the trout fishing season. There is no closed season on taking trout from Nantahala River and all tributaries (excluding impoundments) upstream from Nantahala Lake, and the impounded waters of power reservoirs and municipally-owned water supply reservoirs open to the public for fishing.
- (3) Bass taken from Calderwood Reservoir may be retained without restriction as to size limit.
- (4) On Mattamuskeet Lake, special federal regulations apply.
- (5) In the inland fishing waters of Cape Fear, Neuse, Pee-Dee, Pungo and Tar-Pamlico rivers and their tributaries and the Roanoke River and its tributaries, including the Cashie, Middle, and Eastmost rivers, extending upstream to the first impoundment, the daily creel limit for striped bass and their hybrids is three fish and the minimum length limit is 18 inches. In the Roanoke River and its tributaries, including the Cashie, Middle, and Eastmost rivers-from April 1 to May 31 no fish between the lengths of 22 inches and 27 inches may be retained.
- (6) See 15A NCAC 10C .0407 for open seasons for taking nongame fishes by special devices.
- (7) The maximum combined number of black bass of all species that may be retained per day is five fish, no more than two of which may be smaller than the applicable minimum size limit. The minimum size limit for all species of black bass is 14 inches, with no exception in Lake Luke Marion in Moore County, in Reedy Creek Park lakes in Mecklenburg County, ~~in Lake Maekintosh in Alamance and Guilford counties~~, in Lake Rim in Cumberland County, in Currituck Sound and tributaries north of Wright Memorial Bridge, in North River and tributaries in Currituck and Camden Counties north of a line between Camden Point and the end of SR 1124, in High Rock Lake downstream of I-85, in Badin Lake, in Falls Lake, in Lake Tillery, ~~and in Blewett Falls Lake~~, ~~Lake, and in the New River and its tributaries in Onslow County~~. In and west of Madison, Buncombe, Henderson and Polk Counties and in designated public mountain trout waters the minimum size limit is 12 inches. In B. Everett Jordan Reservoir a minimum size limit of 16 inches, with no exception, applies to largemouth bass. In Falls of Neuse Reservoir, east of SR 1004, ~~and Sutton Lake~~ and Tuckertown Lake no black bass between the lengths of 12 inches and 16 inches may be retained, and the minimum size limit for black bass is 16 inches, except that the daily creel may contain two black bass of less than 12 inches in length. In W. Kerr Scott Reservoir there is no minimum size limit for spotted bass.
- (8) A minimum size limit of 15 inches applies to walleye taken from Lake James and its tributaries, and the daily creel limit for walleye is four fish in Linville River upstream from the NC 126 bridge above Lake James.
- (9) The creel limit for black bass and walleye taken from Calderwood Reservoir is 10.
- (10) The minimum size limit for all black bass, with no exception, is 18 inches in the following trophy bass lakes:
  - (A) Cane Creek Lake in Union County; and
  - (B) Lake Thom-A-Lex in Davidson County;
  - (C) Sutton Lake in New Hanover County.
- (11) In all impounded inland waters and their tributaries, except those waters described in Exceptions (1), the daily creel limit of striped bass and their hybrids may include not more than two fish of smaller size than the minimum size limit.
- (12) In Lake Tillery, Falls Lake, High Rock Lake, Badin Lake, Tuckertown Lake, Lake Hyco, and Cane Creek Lake a daily creel limit of 20 fish and a minimum size limit of 8 inches apply to crappie.
- (13) In designated inland fishing waters of Roanoke Sound, Croatan Sound, Albemarle Sound, Chowan River, Currituck Sound, Alligator River, Scuppernong River, and their tributaries (excluding the Roanoke River and Cashie River and their tributaries), striped bass fishing season, size limits and creel limits shall be the same as those established by duly adopted rules or proclamations of the Marine Fisheries Commission in adjacent joint or coastal fishing waters.

- (14) The daily creel and length limits for channel, white, and blue catfish in designated urban lakes are provided for in 15A NCAC 10C .0401(d).
- (15) The Executive Director may, by proclamation, suspend or extend the hook-and-line season for striped bass in the inland and joint waters of coastal rivers and their tributaries. It is unlawful to violate the provisions of any proclamation issued under this authority.
- (16) In the entire Lumber River from the Camp MacKall bridge (SR 1225, at the point where Richmond, Moore, Scotland, and Hoke counties join) to the South Carolina state line and in all public fishing waters east of I-95, except Tar River Reservoir in Nash County, the daily creel limit for sunfish is 30 in aggregate, no more than 12 of which may be redbreast sunfish.
- (17) It is unlawful to possess bowfin taken from the Lumber River and its tributaries.
- (18) In Sutton Lake, no largemouth bass may be retained from December 1 through March 31.

*Statutory Authority G.S. 113-134; 113-292; 113-304; 113-305.*

#### **SECTION .0400 - NONGAME FISH**

##### **.0401 MANNER OF TAKING NONGAME FISHES: PURCHASE AND SALE**

(a) Except as permitted by the rules in this Section, it is unlawful to take nongame fishes from the inland fishing waters of North Carolina in any manner other than with hook and line or grabbling. Nongame fishes may be taken by hook and line or grabbling at any time without restriction as to size limits or creel limits, except that no trotlines or set-hooks may be used in the impounded waters located on the Sandhills Game Land or in designated public mountain trout waters, and in Lake Waccamaw, trotlines or set-hooks may be used only from October 1 through April 30. The season for taking nongame fishes by other hook and line methods in designated public mountain trout waters shall be the same as the trout fishing season.

(b) Nongame fishes taken by hook and line, grabbling or by licensed special devices may be sold, except that bowfin taken from the Lumber River and its tributaries may not be sold or possessed. Eels less than six inches in length taken from inland waters may not be sold and possession is limited to 200 per day for bait.

(c) Freshwater mussels may only be taken from impounded waters, except mussels shall not be taken in Lake Waccamaw and in University Lake in Orange County.

(d) In the Urban Lakes listed below it is unlawful to take channel, white or blue catfish (forked tail catfish) by means other than hook and line; the daily creel limit for forked tail catfish is six fish in aggregate and the minimum length limit is 12 inches:

Cedar Rock Pond, Alamance County  
Frank Liske Park Lake, Cabarrus County  
Lake Rim, Cumberland County  
Campus Hills Pond, Durham County  
Kernersville Lake, Forsyth County  
Winston Pond, Forsyth County  
Bur-Mil Park Pond, Guilford County  
Oka T. Hester Pond, Guilford County  
San-Lee Park Ponds, Lee County  
Freedom Park Pond, Mecklenburg County  
Hornet's Nest Ponds, Mecklenburg County  
Lake Luke Marion, Moore County  
Apex Lake, Wake County  
Lake Crabtree, Wake County  
Shelley Lake, Wake County  
Freedom Park Pond, Mecklenburg County  
Hornet's Nest Ponds, Mecklenburg County  
Campus Hills Pond, Durham County  
San-Lee Park Ponds, Lee County  
Winston Pond, Forsyth County  
Lake Toisnot, Wilson County  
Lake Rim, Cumberland County

*Statutory Authority G.S. 113-134; 113-272; 113-292.*

**.0404 SPECIAL DEVICE FISHING**

(a) Bow and Arrow. The use of bow [as defined in 15A NCAC 10B .0116(a)] and arrow as a licensed special device is authorized for taking nongame fishes at any time from all inland fishing waters other than impounded waters located on the Sandhills Game Land and designated public mountain trout waters. Unless specifically prohibited, bow and arrow may be used in joint fishing waters. It is unlawful to take fish with crossbow and arrow in any inland fishing waters.

(b) Nets. Manually operated nets, including seines and bow, cast, dip, gill, drift and fyke nets may be used under the special device fishing license.

(1) No fixed gill net or other stationary net which may be authorized as a special fishing device may be more than 100 yards in length, nor shall any such net be placed within 50 yards of any other fixed net. Fixed nets must be set so that they run parallel to the nearest shoreline, except in the Neuse, Trent, Northeast Cape Fear, Cape Fear, and Black Rivers and their tributaries. No anchored or fixed gill net or drift net shall be used unless such net is marked for the protection of boat operators. A net shall be deemed so marked when there is attached to it at each end two separate yellow buoys which shall be of solid foam or other solid buoyant material no less than five inches in its smallest dimensions. The owner shall always be identified on a buoy on each end either by using engraved buoys or by attaching engraved metal or plastic tags to the buoys. Such identification shall include one of the following: owner's N.C. motor boat registration number, or owner's U.S. vessel documentation name, or owner's last name and initials.

(2) It is unlawful to attach gill nets to any wire, rope, or similar device extended across any navigable watercourse.

(3) All fixed or drift gill nets must be attended when fished in the designated inland waters of ~~Wildlife District 1 (Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus, Craven, Cumberland, Currituck, Dare, Duplin, Gates, Greene, Harnett, Hertford, Hoke, Hyde, Jones, Lenoir, Martin, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Robeson, Sampson, Scotland, Tyrrell and Washington counties. counties). Wildlife District 2 (Beaufort, Carteret, Craven, Duplin, Greene, Jones, Lenoir, New Hanover, Onslow, Pamlico, Pender and Pitt counties) and Wildlife District 4 (Bladen, Brunswick, Columbus, Cumberland, Harnett, Hoke, Robeson, Sampson and Scotland counties).~~ Attended as used in this Rule, requires that fishermen be within 100 yards of all sets of nets at all times.

(c) Traps. Baskets and traps, including automobile tires, may be used under the special device fishing license. Such devices when set and left unattended shall be affixed with a card or tag furnished by the license holder and upon which his name and address shall be legibly and indelibly inscribed. No fish trap may exceed 60 inches in length or 30 inches in depth or width. No lead nets, wing nets, or other device designed to guide or herd fish may be attached to the trap or used or set within 25 feet of the trap.

(d) Spears. Manually operated gigs or under-water spear or harpoon guns may be used under the special fishing device license in the inland waters having a season for their use specified in Rule .0407 of this Section.

(e) Crab pots. Persons owning property adjacent to the inland fishing waters of coastal rivers and their tributaries are permitted to set two crab pots to be attached to their property and not subject to special device license requirements.

(f) Eel pots. ~~It is unlawful to use pots with mesh sizes smaller than one inch by one-half inch unless such pots contain an escape panel that is at least four inches square with a mesh size of one inch by one-half inch located in the outside panel of the upper chamber of rectangular pots and in the rear portion of cylindrical pots, except that not more than two eel pots per fishing license with a mesh of any size may be used to take eels for bait.~~

(1) ~~It is unlawful to use pots in any navigation channel maintained and marked by State or Federal agencies.~~  
(2) ~~It is unlawful to use pots unless each pot is marked by attaching a floating buoy which shall be of solid foam or other solid buoyant material and no less than five inches in diameter and no less than five inches in length. Buoys may be of any color except yellow. The owner shall always be identified on the attached buoy by using engraved buoys or by engraved metal or plastic tags attached to the buoy. Such identification shall include one of the following:~~

(A) owner's N.C. motorboat registration number; or  
(B) owner's U.S. vessel documentation name; or  
(C) owner's last name and initials.

Statutory Authority G.S. 113-134; 113-272.2; 113-276; 113-292.

**.0407 PERMITTED SPECIAL DEVICES AND OPEN SEASONS**

Except in designated public mountain trout waters, and in impounded waters located on the Sandhills Game Land, there is a year-round open season for the licensed taking of nongame fishes by bow and arrow. All fixed and drift gill nets must be attended when fished in the designated inland waters of ~~the counties listed in 15A NCAC 10C .0404(b)(3) Wildlife Districts 1, 2 and 4.~~ Attended as used in this Rule and in 15A NCAC 10C .0404(b)(3) requires that fisherman be within 100 yards of all sets of nets at all times. Seasons and waters in which the use of other special devices is authorized are

indicated by counties below:

- (1) Alamance:
  - (a) July 1 to August 31 with seines in Alamance Creek below NC 49 bridge and Haw River;
  - (b) July 1 to June 30 with gigs in all public waters;
- (2) Alexander: July 1 to June 30 with traps and gigs in all public waters; and with spear guns in Lake Hickory and Lookout Shoals Reservoir;
- (3) Alleghany: July 1 to June 30 with gigs in New River, except designated public mountain trout waters;
- (4) Anson:
  - (a) July 1 to June 30 with traps and gigs in all public waters;
  - (b) December 1 to June 5 with dip and bow nets in Pee Dee River below Blewett Falls Dam, and with gill nets in Pee Dee River below the lower end of Goat Island;
  - (c) July 1 to August 31 with seines in all running public waters, except Pee Dee River from Blewett Falls downstream to the Seaboard Coast Line Railroad trestle;
- (5) Ashe: July 1 to June 30 with gigs in New River (both forks), except designated public mountain trout waters;
- (6) Beaufort:
  - (a) July 1 to June 30 with traps in the Pungo River, and in the Tar and Pamlico Rivers above Norfolk and Southern Railroad bridge; and with gigs in all inland public waters;
  - (b) December 1 to June 5 with dip and bow nets in all inland public waters; with attended drift gill nets in Tar River upstream from the Norfolk and Southern Railroad bridge at Washington to the Pitt County line; and with attended gill nets in all other inland public waters, except Blounts Creek, Chocowinity Bay, Durham Creek, Mixon Creek and Nevil Creek and their tributaries.
- (7) Bertie:
  - (a) July 1 to June 30 with traps in the Broad Creek (tributary of Roanoke);
  - (b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters; and with attended gill nets in all inland public waters;
- (8) Bladen:
  - (a) December 1 to March 1 with attended gill nets in all inland public waters, except Jones, Salters, White, Singletary and Baytree (Black) Lakes;
  - (b) December 1 to May 1 with attended gill nets in Black River;
  - (c) December 1 to June 5 with dip and bow nets in Black River;
- (9) Brunswick:
  - (a) December 1 to March 1 with attended gill nets in all inland public waters, except Waccamaw River and its tributaries;
  - (b) December 1 to May 1 with dip, bow, and attended gill nets in Alligator Creek, Hoods Creek, Indian Creek, Orton Creek below Orton Pond, Rices Creek, Sturgeon Creek and Town Creek;
- (10) Buncombe: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;
- (11) Burke:
  - (a) July 1 to August 31 with seines in all running public waters, except Johns River and designated public mountain trout waters;
  - (b) July 1 to June 30 with traps, gigs, and spear guns in all public waters, except designated public mountain trout waters and Lake James;
- (12) Cabarrus:
  - (a) July 1 to August 31 with seines in all running public waters,
  - (b) July 1 to June 30 with traps and gigs in all public waters;
- (13) Caldwell: July 1 to June 30 with traps, gigs, and spear guns in all public waters, except designated public mountain trout waters;
- (14) Camden:
  - (a) July 1 to June 30 with traps in all inland public waters;
  - (b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters; and with attended gill nets in all inland public waters;
- (15) Carteret: December 1 to June 5 with dip, bow, and attended gill nets in all inland public waters except South River and the tributaries of the White Oak River;
- (16) Caswell:
  - (a) July 1 to June 30 with gigs in all public waters;
  - (b) July 1 to August 31 with seines in all running public waters, except Moons Creek;
  - (c) July 1 to June 30 with traps in Hyco Reservoir;
- (17) Catawba:

- (a) July 1 to August 31 with seines in all running public waters, except Catawba River below Lookout Dam;
- (b) July 1 to June 30 with traps, spear guns, and gigs in all public waters;
- (18) Chatham:
  - (a) December 1 to April 15 with dip and gill nets in the Cape Fear River, Deep River, Haw River and Rocky River (local law);
  - (b) July 1 to August 31 with seines in the Cape Fear River, and Haw River;
  - (c) July 1 to June 30 with traps in Deep River; and with gigs in all public waters;
- (19) Cherokee: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;
- (20) Chowan:
  - (a) December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters; and with attended gill nets in all inland public waters, except Bennetts Mill Pond and Dillard Pond;
  - (b) July 1 to June 30 with traps in all inland public waters, excluding public lakes, ponds, and other impounded waters;
- (21) Clay: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;
- (22) Cleveland:
  - (a) July 1 to August 31 with seines in all running public waters;
  - (b) July 1 to June 30 with gigs, traps and spear guns in all public waters;
- (23) Columbus:
  - (a) December 1 to March 1 with attended gill nets in all inland public waters, except Lake Waccamaw and its tributaries and Waccamaw River and its tributaries;
  - (b) December 1 to March 1 with gigs in all inland public waters, except Lake Waccamaw and its tributaries;
  - (c) December 1 to June 5 with dip, bow, and attended gill nets in Livingston Creek;
- (24) Craven:
  - (a) July 1 to June 30 with traps in the main run of the Trent and Neuse Rivers;
  - (b) December 1 to June 5 with dip, bow, and attended gill nets in all inland public waters, except Pitch Kettle, Grindle, Slocum, Spring and Hancock Creeks and their tributaries; with dip and bow nets in Slocum Creek above the US 70 bridge; and with seines in the Neuse River;
- (25) Cumberland: December 1 to March 1 with attended gill nets in all inland public waters;
- (26) Currituck:
  - (a) July 1 to June 30 with traps in Tulls Creek and Northwest River;
  - (b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters; and with attended gill nets in Northwest River and Tulls Creek;
- (27) Dare:
  - (a) July 1 to June 30 with traps in Mashoes Creek, Milltail Creek, East Lake and South Lake;
  - (b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters; and with attended gill nets in Martin Point Creek;
- (28) Davidson:
  - (a) July 1 to August 31 with seines in all running public waters,
  - (b) July 1 to June 30 with gigs in all public waters, and with traps in all public waters except Leonard's Creek, Abbott's Creek below Lake Thom-A-Lex dam, and the Abbott's Creek arm of High Rock Lake upstream from the NC 8 bridge;
- (29) Davie:
  - (a) July 1 to June 30 with traps and gigs in all public waters;
  - (b) July 1 to August 31 for taking only carp and suckers with seines in Dutchmans Creek from US 601 to Yadkin River and in Hunting Creek from SR 1338 to South Yadkin River;
- (30) Duplin:
  - (a) December 1 to March 1 with attended gill nets in Baysden Pond and in the Northeast Cape Fear River, including old channels from a point one mile above SR 1700 (Serecta) Bridge downstream to the county line;
  - (b) December 1 to June 5 with dip, bow, and attended gill nets and seines in the main run of the Northeast Cape Fear River downstream from a point one mile above Serecta Bridge;
- (31) Durham:
  - (a) July 1 to August 31 with seines in Neuse River,
  - (b) July 1 to June 30 with gigs in all public waters;
- (32) Edgecombe:
  - (a) December 1 to March 15 with gill nets in Noble Mill Pond and Wiggins Lake;
  - (b) December 1 to June 5 with dip and bow nets in all public waters; and with drift gill nets in Tar River below the

bridge at Old Sparta to the Pitt County line;

(33) Forsyth: July 1 to June 30 with traps and gigs in all public waters, except traps may not be used in Belews Creek Reservoir;

(34) Franklin:

- (a) December 1 to March 1 with gill nets in Clifton Pond, Parrish Pond, Jackson Pond and Lake Royale;
- (b) July 1 to August 31 with seines in Tar River;
- (c) July 1 to June 30 with gigs in all public waters, except Parrish, Laurel Mill, Jackson, Clifton, Moore's and Perry's Ponds, and in the Franklinton City ponds;

(35) Gaston:

- (a) July 1 to August 31 with seines in all running public waters;
- (b) July 1 to June 30 with gigs, traps and spear guns in all public waters;

(36) Gates: December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters; and with attended gill nets in all inland public waters, except Williams (Merchants Mill) Pond;

(37) Graham: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;

(38) Granville:

- (a) July 1 to June 30 with gigs in all public waters, except Kerr Reservoir;
- (b) July 1 to August 31 with seines in the Neuse River and the Tar River below US 158 bridge;
- (c) July 1 to June 30 with dip and cast nets in Kerr Reservoir;
- (d) July 1 to June 30 with cast nets in all public waters;

(39) Greene: December 1 to June 5 with dip, bow, and attended gill nets and reels in Contentnea Creek;

(40) Guilford:

- (a) July 1 to August 31 with seines in Haw River, Deep River below Jamestown Dam, and Reedy Fork Creek below US 29 bridge;
- (b) July 1 to June 30 with gigs in all public waters;

(41) Halifax:

- (a) December 1 to March 1 with gill nets in White's Mill Pond;
- (b) December 1 to June 5 with dip and bow nets in Beech Swamp, Clarks Canal, Conoconnara Swamp, Fishing Creek below the Fishing Creek Mill Dam, Kehukee Swamp, Looking Glass Gut, Quankey Creek, and White's Mill Pond Run;
- (c) July 1 to June 30 with dip and cast nets in Gaston Reservoir and Roanoke Rapids Reservoir;

(42) Harnett:

- (a) December 1 to March 1 with attended gill nets in all inland public waters;
- (b) January 1 to May 31 with gigs in Cape Fear River and tributaries;
- (c) December 1 to June 5 with dip and bow nets in Cape Fear River;

(43) Haywood: July 1 to June 30 with gigs in all public waters, except Lake Junaluska and designated public mountain trout waters;

(44) Henderson: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;

(45) Hertford:

- (a) July 1 to June 30 with traps in Wiccacon Creek;
- (b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters; and with attended gill nets in all inland public waters, except mill ponds;

(46) Hoke: December 1 to March 1 with attended gill nets in all inland public waters;

(47) Hyde:

- (a) July 1 to June 30 with traps in all inland waters;
- (b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters; and with attended gill nets in Pungo River and tributaries upstream from US 264 bridge, Scranton Creek, and Long Shoal River and tributaries;

(48) Iredell: July 1 to June 30 with traps and gigs in all public waters; and with spear guns in Lookout Shoals Reservoir and Lake Norman;

(49) Jackson: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;

(50) Johnston:

- (a) December 1 to March 1 with gill nets in Cattails Lake, Holts Lake, Holts Pond, and Wendell Lake;
- (b) December 1 to June 5 with dip and bow nets in Black Creek, Little River, Middle Creek, Mill Creek, Neuse River, and Swift Creek;

(51) Jones:

- (a) July 1 to June 30 with traps in the Trent River below US 17 bridge and White Oak River below US 17 bridge;

- (b) December 1 to June 5 with dip, bow, and attended gill nets in all inland public waters, except the White Oak River and its tributaries;
- (c) December 1 to June 5 with dip and bow nets in the main run of the White Oak River;
- (d) March 1 to April 30 with attended gill nets in the main run of the White Oak River;
- (52) Lee:
  - (a) December 1 to April 15 with dip and gill nets (local law) in Cape Fear River and Deep River; and with gill nets in Morris Pond;
  - (b) July 1 to August 31 with seines in Cape Fear River;
  - (c) July 1 to June 30 with traps in Deep River, and with gigs in all public waters;
- (53) Lenoir:
  - (a) July 1 to June 30 with traps in Neuse River below US 70 bridge at Kinston;
  - (b) December 1 to June 5 with dip, bow, and attended gill nets in Neuse River and Contentnea Creek upstream from NC 118 bridge at Grifton; and with seines in Neuse River;
- (54) Lincoln:
  - (a) July 1 to August 31 with seines in all running public waters;
  - (b) July 1 to June 30 with traps, gigs and spear guns in all public waters;
- (55) McDowell:
  - (a) July 1 to August 31 with seines in all running public waters, except designated public mountain trout waters;
  - (b) July 1 to June 30 with traps, gigs, and spear guns in all public waters, except designated public mountain trout waters and Lake James;
- (56) Macon: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;
- (57) Madison: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;
- (58) Martin: December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters; and with attended gill nets in all inland public waters;
- (59) Mecklenburg:
  - (a) July 1 to August 31 with seines in all running public waters;
  - (b) July 1 to June 30 with traps, gigs and spear guns in all public waters except Freedom Park Pond and Hornet's Nest Ponds;
- (60) Montgomery:
  - (a) July 1 to August 31 with seines in all running public waters, except that part of the Pee Dee River between the Lake Tillery dam at Hydro and the mouth of Rocky River;
  - (b) July 1 to June 30 with traps and gigs in all public waters;
- (61) Moore:
  - (a) December 1 to April 15 with gill nets in Deep River and all tributaries;
  - (b) July 1 to August 31 with seines in all running public waters except in Deep River;
  - (c) July 1 to June 30 with gigs in all public waters, except lakes located on the Sandhills Game Land; and with traps in Deep River and its tributaries;
- (62) Nash:
  - (a) December 1 to March 1 with gill nets in Boddies Pond and Camp Charles Lake;
  - (b) July 1 to June 30 with gigs in all public waters, except Tar River;
  - (c) December 1 to June 5 with dip and bow nets in the Tar River below Harris' Landing and Fishing Creek below the Fishing Creek Mill Dam;
- (63) New Hanover: December 1 to June 5 with dip, bow, and attended gill nets in all inland public waters, except Sutton (Catfish) Lake;
- (64) Northampton:
  - (a) July 1 to June 30 with gigs in all public waters, except Gaston and Roanoke Rapids Reservoirs and the Roanoke River above the US 301 bridge;
  - (b) December 1 to June 5 with dip and bow nets in Occoneechee Creek, Old River Landing Gut; and with dip, bow and gill nets in Vaughans Creek below Watsons Mill;
  - (c) July 1 to June 30 with dip and cast nets in Gaston Reservoir and Roanoke Rapids Reservoir;
- (65) Onslow:
  - (a) July 1 to June 30 with traps in White Oak River below US 17 bridge;
  - (b) August 1 to March 31 with eel pots in the main run of New River between US 17 bridge and the mouth of Hawkins Creek;
  - (c) December 1 to March 1 with attended gill nets in Catherine Lake and Baysden Pond;
  - (d) December 1 to June 5 with dip, bow, and attended gill nets in the main run of New River; and with dip and bow nets in the main run of the White Oak River;

- (e) March 1 to April 30 with attended gill nets in the main run of the White Oak River; and with dip, bow and attended gill nets in Grant's Creek;
- (66) Orange:
  - (a) July 1 to August 31 with seines in Haw River,
  - (b) July 1 to June 30 with gigs in all public waters;
- (67) Pamlico: December 1 to June 5 with dip, bow and attended gill nets in all inland public waters;
- (68) Pasquotank:
  - (a) July 1 to June 30 with traps in all inland waters;
  - (b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters; and with attended gill nets in all inland public waters;
- (69) Pender:
  - (a) December 1 to June 5 with dip, bow, and attended gill nets in the Northeast Cape Fear River and Long Creek; with dip and bow nets in Black River; and with seines in the main run of Northeast Cape Fear River;
  - (b) December 1 to May 1 with attended gill nets in Black River; and with dip, bow, and attended gill nets in Moore's Creek approximately one mile upstream to New Moon Fishing Camp;
- (70) Perquimans:
  - (a) July 1 to June 30 with traps in all inland waters;
  - (b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters; and with attended gill nets in all inland public waters;
- (71) Person:
  - (a) July 1 to August 31 with seines in Hyco Creek and Mayo Creek;
  - (b) July 1 to June 30 with gigs in all public waters.
- (72) Pitt:
  - (a) July 1 to June 30 with traps in Neuse River and in Tar River below the mouth of Hardee Creek east of Greenville;
  - (b) December 1 to June 5 with dip, bow and attended drift gill nets and with seines in Tar River; and with dip, bow and attended gill nets in all other inland public waters, except Grindle Creek, and Contentnea Creek between NC 118 bridge at Grifton and the Neuse River;
- (73) Polk: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;
- (74) Randolph:
  - (a) December 1 to March 1 with gill nets in Deep River and Uwharrie River;
  - (b) July 1 to August 31 with seines in Deep River above the Coleridge Dam and Uwharrie River;
  - (c) July 1 to June 30 with gigs in all public waters;
- (75) Richmond:
  - (a) July 1 to August 31 with seines in all running public waters, except Pee Dee River from Blewett Falls downstream to the Seaboard Coast Line Railroad trestle;
  - (b) July 1 to June 30 with traps and gigs in all public waters, except lakes located on the Sandhills Game Land;
  - (c) December 1 to June 5 with dip and bow nets in Pee Dee River below Blewett Falls Dam, and with gill nets in Pee Dee River below the mouth of Cartledge Creek;
- (76) Robeson: December 1 to March 1 with attended gill nets and gigs in all inland public waters;
- (77) Rockingham:
  - (a) July 1 to August 31 with seines in Dan River and Haw River;
  - (b) July 1 to June 30 with traps in Dan River; and with gigs in all public waters;
- (78) Rowan:
  - (a) July 1 to August 31 with seines in all running public waters,
  - (b) July 1 to June 30 with traps and gigs in all public waters;
- (79) Rutherford:
  - (a) July 1 to August 31 with seines in all running public waters, except designated public mountain trout waters;
  - (b) July 1 to June 30 with traps, gigs, and spear guns in all public waters, except designated public mountain trout waters;
- (80) Sampson:
  - (a) December 1 to March 1 with attended gill nets in all inland public waters;
  - (b) December 1 to May 1 with attended gill nets in Big Coharie Creek, Black River, and Six Runs Creek;
  - (c) May 2 to June 5 with attended gill nets of no less than five and one-half inch stretch measure in Big Coharie Creek, Black River, and Six Runs Creek;
  - (d) December 1 to June 5 with dip and bow nets in Big Coharie Creek, Black River, and Six Runs Creek;
- (81) Scotland: December 1 to March 1 with attended gill nets in all inland public waters, except lakes located on the

Sandhills Game Land;

(82) Stanly:  
(a) July 1 to August 31 with seines in all running public waters, except that part of the Pee Dee River between the Lake Tillery dam at Hydro and the mouth of Rocky River;  
(b) July 1 to June 30 with traps and gigs in all public waters;

(83) Stokes: July 1 to June 30 with traps and gigs in all public waters, except designated public mountain trout waters, and traps may not be used in Belews Creek Reservoir;

(84) Surry: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters; and with traps in the main stem of Yadkin River;

(85) Swain: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;

(86) Transylvania: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;

(87) Tyrrell:  
(a) July 1 to June 30 with traps in Scuppernong River, Alligator Creek, and the drainage canals of Lake Phelps ~~except Bee Tree Canal within 50 yards of the Lake Phelps fish ladder;~~  
(b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding Lake Phelps, ~~Bee Tree Canal within 50 yards of the Lake Phelps fish ladder~~, public lakes, ponds and other impounded waters; and with attended gill nets in Alligator Creek;

(88) Union:  
(a) July 1 to August 31 with seines in all running public waters,  
(b) July 1 to June 30 with traps and gigs in all public waters;

(89) Vance:  
(a) December 1 to March 1 with gill nets in Southerlands Pond and Ellis Pond;  
(b) July 1 to August 31 with seines in the Tar River;  
(c) July 1 to June 30 with gigs in all public waters, except Rolands, Faulkners, Southerlands, and Weldon Ponds, City Lake, and Kerr Reservoir;  
(d) July 1 to June 30 with dip and cast nets in Kerr Reservoir;  
(e) July 1 to June 30 with cast nets in all public waters;

(90) Wake:  
(a) July 1 to June 30 with gigs in all public waters, except Sunset, Benson, Wheeler, Raleigh, and Johnson Lakes;  
(b) December 1 to June 5 with dip and bow nets in the Neuse River below Milburnie Dam, and Swift Creek below Lake Benson Dam;

(91) Warren:  
(a) July 1 to August 31 with seines in Fishing Creek, Shocco Creek, and Walker Creek; excluding Duck and Hammes Mill Ponds;  
(b) July 1 to June 30 with gigs in all public waters, except Duck and Hammes Mill Ponds, Kerr Reservoir, and Gaston Reservoir;  
(c) July 1 to June 30 with dip and cast nets in Kerr Reservoir and Gaston Reservoir;  
(d) July 1 to June 30 with cast nets in all public waters;

(92) Washington:  
(a) July 1 to June 30 with traps in the drainage canals of Lake Phelps;  
(b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding Lake Phelps, public lakes, ponds and other impoundments; and with attended gill nets in Conaby Creek;

(93) Wayne:  
(a) December 1 to March 1 with gill nets in Sasser's Mill Pond and Sleepy Creek Lake;  
(b) December 1 to June 5 with dip and bow nets in Little River, Mill Creek, and Neuse River, except from Quaker Neck Dam downstream to SR 1008 (Tolar) bridge;

(94) Wilkes: July 1 to June 30 with traps in Yadkin River below W. Kerr Scott Reservoir; and with gigs and spear guns in all public waters, except designated public mountain trout waters;

(95) Wilson:  
(a) July 1 to June 30 with gigs in Contentnea Creek (except Buckhorn Reservoir), including unnamed tributaries between Flowers Mill and SR 1163 (Deans) bridge;  
(b) December 1 to June 5 with dip and bow nets in Contentnea Creek below US 301 bridge and in Toisnot Swamp downstream from the Lake Toisnot Dam;  
(c) January 1 to March 1 with gill nets in Silver Lake;

(96) Yadkin: July 1 to June 30 with gigs in all public waters, and with traps in the main stem of Yadkin River.

Statutory Authority G.S. 113-134; 113-276; 113-292.

SUBCHAPTER 10D - GAME LANDS REGULATIONS

**.0002 GENERAL REGULATIONS REGARDING USE**

(a) **Trespass.** Entry on game lands for purposes other than hunting, trapping or fishing shall be as authorized by the landowner and there shall be no removal of any plants or parts thereof, or other materials, without the written authorization of the landowner. Travel is restricted, except by authorized personnel, to direct access from SR 2074 to the established waterfowl viewing stands on Cowan's Ford Waterfowl Refuge. The Wildlife Resources Commission may designate areas on game lands as either an Archery Zone, Safety Zone or Restricted Zone.

- (1) **Archery Zone.** On portions of game lands posted as "Archery Zones" hunting is limited to bow and arrow hunting only.
- (2) **Safety Zone.** On portions of game lands posted as "Safety Zones" hunting is prohibited. No person shall hunt or discharge a firearm or bow and arrow within, into, or across a posted safety zone on any game land.
- (3) **Restricted Zone.** Portions of game lands posted as "Restricted Zones" are closed to all use by the general public, and entry upon such an area for any purpose is prohibited without first having obtained specific written approval of such entry or use from an authorized agent of the Wildlife Resources Commission.
- (4) **Establishment of Archery and Restricted Zones.** The Commission shall conduct a public input meeting in the area where the game land is located before establishing any archery or restricted zone. After the input meeting the public comments shall be presented to an official Commission meeting for final determination.

(b) **Littering.** No person shall deposit any litter, trash, garbage, or other refuse at any place on any game land except in receptacles provided for disposal of such refuse at designated camping and target-shooting areas. No garbage dumps or sanitary landfills shall be established on any game land by any person, firm, corporation, county or municipality, except as permitted by the landowner.

(c) **Possession of Hunting Devices.** It is unlawful to possess a firearm or bow and arrow on a game land at any time except during the open hunting seasons or hunting days for game birds or game animals, other than fox, thereon unless said device is cased or not immediately available for use, provided that such devices may be possessed and used by persons participating in field trials on field trial areas and on target shooting areas designated by the landowner, and possessed in designated camping areas for defense of persons and property; and provided further that .22 caliber pistols with barrels not greater than seven and one-half inches in length and shooting only short, long, or long rifle ammunition may be carried as side arms on game lands at any time other than by hunters during the special bow and arrow and muzzle-loading firearms deer hunting seasons and by individuals training dogs during closed season without field trial authorization. This Rule shall not prevent possession or use of a bow and arrow as a licensed special fishing device in those waters where such use is authorized. During the closed firearms seasons on big game (deer, bear, boar, wild turkey), no person shall possess a shotgun shell containing larger than No. 4 shot or any rifle or pistol larger than a .22 caliber rimfire while on a game land, except that shotgun shells containing any size steel or non-toxic shot may be used while waterfowl hunting. Furthermore, only shotguns with any size shot may be possessed during the big game season for turkey. No person shall hunt with or have in possession any shotgun shell containing lead or toxic shot while hunting on any posted waterfowl impoundment on any game land, or while hunting waterfowl on Butner-Falls of Neuse Game Land or New Hope Game Land, except shotgun shells containing lead buckshot may be used while deer hunting.

(d) **Game Lands License**

- (1) **Hunting and Trapping**
  - (A) **Requirement.** Except as provided in Part (B) of this Subparagraph, any person entering upon any game land for the purpose of hunting, trapping, or participating in dog training or field trial activities must have in his possession a game lands license in addition to the appropriate hunting or trapping licenses.
  - (B) **Exceptions**
    - (i) A person under 16 years of age may hunt on game lands on the license of his parent or legal guardian.
    - (ii) The resident and nonresident sportsman's licenses include game lands use privileges.
    - (iii) Judges and nonresidents participating in field trials under the circumstances set forth in Subsection (e) of this Rule may do so without the game lands license.
    - (iv) On the game lands listed in Rule .0003(d)(1) of this Subchapter the game lands license is required only for hunting doves; all other activities are subject to the control of the landowners.
- (2) **Trout Fishing.** Any person 16 years of age or over, including an individual fishing with natural bait in the county of his residence, entering a game land for the purpose of fishing in designated public mountain trout waters located thereon must have in his possession a game lands license in addition to the regular fishing license and special trout license. The game lands license is not required to fish in that part of Slick Rock Creek which coincides with the Tennessee State line, or when fishing from boat on Calderwood Lake. The resident and nonresident sportsman's licenses and short-term comprehensive fishing licenses include trout fishing privileges on game lands.

(e) Field Trials and Training Dogs. A person serving as judge of a field trial which, pursuant to a written request from the sponsoring organization, has been officially authorized in writing and scheduled for occurrence on a game land by an authorized representative of the Wildlife Resources Commission, and any nonresident participating therein may do so without procuring a game lands license, provided such nonresident has in his possession a valid hunting license issued by the state of his residence.

Any individual or organization sponsoring a field trial on the Sandhills Field Trial grounds or the Laurinburg Fox Trial facility shall file with the commission's agent an application to use the area and facility accompanied by a check for the facility use fee computed at the rate of one hundred dollars (\$100.00) ~~fifty dollars (\$50.00)~~ for each scheduled day of the trial. The total facility use fee will cover the period from 12:00 noon of the day preceding the first scheduled day of the trial to 10:00 a.m. of the day following the last scheduled day of the trial. The facility use fee must be paid for all intermediate days on which for any reason trials are not run but the building or facilities are used or occupied. A fee of twenty-five dollars (\$25.00) per day shall be charged to sporting, educational, or scouting groups for scheduled events utilizing the club house only. No person or group of persons or any other entity shall enter or use in any manner any of the physical facilities located on the Laurinburg Fox Trial or the Sandhills Field Trial grounds without first having obtained specific written approval of such entry or use from an authorized agent of the Wildlife Resources Commission, and no such entry or use of any such facility shall exceed the scope of or continue beyond the specific approval so obtained.

The Sandhills Field Trial facilities shall be used only for field trials scheduled with the approval of the Wildlife Resources Commission. No more than 16 days of field trials may be scheduled for occurrence on the Sandhills facilities during any calendar month, and no more than four days may be scheduled during any calendar week; provided, that a field trial requiring more than four days may be scheduled during one week upon reduction of the maximum number of days allowable during some other week so that the monthly maximum of 16 days is not exceeded. Before October 1 of each year, the North Carolina Field Trial Association or other organization desiring use of the Sandhills facilities between October 22 and November 18 and between December 3 and March 31 must submit its proposed schedule of such use to the Wildlife Resources Commission for its consideration and approval. The use of the Sandhills Field Trial facilities at any time by individuals for training dogs is prohibited; elsewhere on the Sandhills Game Lands dogs may be trained only on Mondays, Wednesdays and Saturdays from October 1 through April 1.

Dogs may not be trained or permitted to run unleashed from April 1 through August 15 on any game land located west of I-95, except when participating in field trials sanctioned by the Wildlife Resources Commission. Additionally, on game lands located west of I-95 where special hunts are scheduled for sportsmen participating in the Disabled Sportsman Program, dogs may not be trained or allowed to run unleashed during legal big game hunting hours on the dates of the special hunts.

(f) Trapping. Subject to the restrictions contained in 15A NCAC 10B .0110, .0302 and .0303, trapping of furbearing animals is permitted on game lands during the applicable open seasons, except that trapping is prohibited:

- (1) on the field trial course of the Sandhills Game Land;
- (2) on the Harmon Den and Sherwood bear sanctuaries in Haywood County;
- (3) in posted "safety zones" located on any game land;
- (4) by the use of multiple sets (with anchors less than 15 feet apart) or bait on the National Forest Lands bounded by the Blue Ridge Parkway on the south, US 276 on the north and east, and NC 215 on the west;
- (5) on Cowan's Ford Waterfowl Refuge in Gaston, Lincoln and Mecklenburg Counties;
- (6) on the Hunting Creek Swamp Waterfowl Refuge.

On those areas of state-owned land known collectively as the Roanoke River Wetlands and including the Broadneck, Company Swamp, Conine Island, Speller-Outlaw and Urquhart tracts, controlled trapping is allowed under a permit system. For information contact the Division of Wildlife Management of the Wildlife Resources Commission.

(g) Use of Weapons. No person shall hunt or discharge a firearm or bow and arrow from a vehicle, or within 200 yards of any building or designated camping area, or within, into, or across a posted "safety zone" on any game land. No person shall hunt with or discharge a firearm within, into, or across a posted "restricted zone" on any game land.

(h) Vehicular Traffic. No person shall drive a motorized vehicle on any game land except on those roads ~~constructed and constructed, maintained and opened~~ for vehicular travel and those trails posted for vehicular travel, unless such person:

- (1) is a participant in scheduled bird dog field trials held on the Sandhills Game Land; or
- (2) holds a special vehicular access identification card and permit issued by the Commission based upon competent medical evidence submitted by the person verifying that a handicap exists that limits physical mobility to the extent that normal utilization of the game lands is not possible without vehicular assistance. Persons meeting this requirement may operate electric wheel chairs, all terrain vehicles, and other passenger vehicles on ungated or open-gated roads otherwise closed to vehicular traffic on game lands owned by the Wildlife Resources Commission and on game lands whose owners have agreed to such use. Those game lands where this special rule applies will be designated in the game land rules and map book. This special access rule for disabled sportsmen does not permit vehicular access on fields, openings, roads, paths, or trials planted to wildlife food or cover. One able-bodied companion, who is identified by a special card issued to each qualified disabled

person, may accompany a disabled person to provide assistance, provided the companion is at all time in visual or verbal contact with the disabled person. The companion may participate in all lawful activities while assisting a disabled person, provided license requirements are met. Any vehicle used by a qualified disabled person for access to game lands under this provision must prominently display the vehicular access permit issued by the Wildlife Resources Commission in the passenger area of the vehicle.

- (i) Camping. No person shall camp on any game land except on an area designated by the landowner for camping.
- (j) Swimming. Swimming is prohibited in the lakes located on the Sandhills Game Land.
- (k) Disabled Sportsman Program. In order to qualify for special hunts for disabled sportsmen listed in 15A NCAC 10D .0003 an individual must have in their possession a Disabled Sportsman permit issued by the Commission. In order to qualify for the permit, the applicant must provide medical certification of one or more of the following disabilities:
  - (1) amputation of one or more limbs;
  - (2) paralysis of one or more limbs;
  - (3) dysfunction of one or more limbs rendering the person unable to perform the task of grasping and lifting with the hands and arms or unable to walk without mechanical assistance, other than a cane;
  - (4) disease or injury or defect confining the person to a wheelchair, walker, or crutches; or
  - (5) legal deafness, meaning the inability to hear and/or understand oral communications with or without assistance of amplification devices.

Participants in the program, except those qualifying by deafness, may operate vehicles on ungated or open-gated roads normally closed to vehicular traffic on Game Lands owned by the Wildlife Resources Commission. Each program participant may be accompanied by one able-bodied companion provided such companion has in his possession the companion permit issued with the Disabled Sportsman permit. It shall be unlawful for anyone other than those holding a Disabled Sportsman permit to hunt, during waterfowl season, within 100 yards of a waterfowl blind designated by the Wildlife Resources Commission as a Disabled Sportsman's hunting blind.

(l) Release of Animals. It is unlawful to release pen-raised animals or birds, or wild animals or birds on game lands without prior written authorization.

(m) Non-Highway Licensed Vehicles. It is unlawful to operate motorized vehicles not licensed for highway use from May 15 through August 15 on all state-owned Game Lands. Such vehicles may be operated August 16 through May 14 only on those roads constructed, maintained, and open for vehicular travel and those trails posted for vehicular use. All operators of such vehicles must have, in their possession, a valid Game Lands Use license.

*Statutory Authority G.S. 113-134; 113-264; 113-270.3; 113-291.2; 113-291.5; 113-305; 113-306.*

### **.0003 HUNTING ON GAME LANDS**

(a) Safety Requirements. No person while hunting on any designated game land shall be under the influence of alcohol or any narcotic drug, or fail to comply with special restrictions regarding the use of the Blue Ridge Parkway where it adjoins game lands listed in this Rule.

(b) Traffic Requirements. No person shall park a vehicle on game lands in such a manner as to block traffic, gates or otherwise prevent vehicles from using any roadway.

(c) Tree Stands. It is unlawful to erect or to occupy, for the purpose of hunting, any tree stand or platform attached by nails, screws, bolts or wire to a tree on any game land designated herein. This prohibition shall not apply to lag-screw steps or portable stands that are removed after use with no metal left remaining in or attached to the tree.

(d) Time and Manner of Taking. Except where closed to hunting or limited to specific dates by this Chapter, hunting on game lands is permitted during the open season for the game or furbearing species being hunted. On managed waterfowl impoundments, hunters shall not enter the posted impoundment areas earlier than 4:00 a.m. on the permitted hunting dates, and hunting is prohibited after 1:00 p.m. on such hunting dates; decoys may not be set out prior to 4:00 a.m. and must be removed by 3:00 p.m. each day. No person shall operate any vessel or vehicle powered by an internal combustion engine on a managed waterfowl impoundment.

No person shall attempt to obscure the sex or age of any bird or animal taken by severing the head or any other part thereof, or possess any bird or animal which has been so mutilated.

No person shall place, or cause to be placed on any game land, salt, grain, fruit, or other foods without prior written authorization of the commission or its agent. A decision to grant or deny authorization shall be made based on the best management practices for the wildlife species in question. No person shall take or attempt to take any game birds or game animals attracted to such foods.

No live wild animals or wild birds shall be removed from any game land.

(e) Hunting Dates: For purposes of this Section "Eastern" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(A); "Central" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(D); "Northwestern" season refers to seasons set for those counties or parts

of counties listed in 15A NCAC 10B .0203(b)(1)(B); "Western" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(C).

- (1) Doves may be taken on the following game lands and dove hunting is limited to Mondays, Wednesdays, Saturdays and to Thanksgiving, Christmas and New Year's Days within the federally-announced season:  
Guilford County--Guilford County Farm Game Land  
Lenoir County--Caswell Farm Game Land
- (2) Any game may be taken during the open seasons on the following game lands and hunting is limited to Mondays, Wednesdays, Saturdays and Thanksgiving, Christmas and New Year's Days. In addition, deer may be taken with bow and arrow on the opening day of the bow and arrow season for deer. Special hunts on other days may also be set up for participants in the Disabled Sportsman Program. Raccoon and opossum hunting may continue until 7:00 a.m. on Tuesdays, until 7:00 a.m. on Thursdays, and until midnight on Saturdays. Additional restrictions apply as indicated in parentheses following specific designations:

Ashe County--Carson Woods Game Land

Bladen County--Bladen County Game Lands

Bladen County--Bladen Lakes State Forest Game Lands (Handguns may not be carried and, except for muzzle-loaders, rifles larger than .22 caliber rimfire may not be used or possessed. On the Breeze Tract and the Singletary Tract deer and bear may be taken only by still hunting. Deer of either sex may be taken Mondays, Wednesdays, and Saturdays from the first Wednesday after Thanksgiving through the third Saturday after Thanksgiving the following Wednesday. Deer of either sex may also be taken the Saturday preceding Eastern bow season with bow and arrow and the Friday preceding the Eastern muzzle-loading season with any legal weapon (with weapons exceptions described in this Paragraph) by participants in the Disabled Sportsman Program. Wild turkey hunting is by permit only.)

Caswell County--Caswell Game Land--(Deer of either sex may also be taken the Friday preceding the Central muzzle-loading season by participants in the Disabled Sportsman Program.)

Catawba and Iredell Counties--Catawba Game Land (No deer may be taken from the tract known as Island Point and deer may be taken with bow and arrow only from the tract known as Molly's backbone.)

Onslow County--White Oak River Impoundment Game Land (In addition to the dates above indicated, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons.)

Pender County--Holly Shelter Game Land (In addition to the dates above indicated, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons. Deer of either sex may be taken on Mondays, Wednesdays, and Saturdays from the first Wednesday after Thanksgiving through the fourth Saturday after Thanksgiving.) (Deer of either sex may also be taken the Friday preceding the Eastern muzzle-loading season with any legal weapon and the Saturday preceding Eastern bow season with bow and arrow by participants in the Disabled Sportsman Program.)

Richmond, Scotland and Moore Counties--Sandhills Game Land (The regular gun season for deer consists of the open hunting dates from the second Monday before Thanksgiving to the third Saturday after Thanksgiving except on the field trial grounds where the gun season is from the second Monday before Thanksgiving to the Saturday following Thanksgiving. Deer may be taken with bow and arrow on all open hunting dates during the bow and arrow season, as well as during the regular gun season. Deer may be taken with muzzle-loading firearms on Monday, Wednesday and Saturday of the second week before Thanksgiving week, and during the regular gun season. Either sex deer hunting with any legal weapon is permitted on all areas the Thursday and Friday prior to the muzzle-loading season described in this Paragraph for participants in the Disabled Sportsman Program. Except for the deer seasons above indicated and the managed either-sex permit hunts, the field trial grounds are closed to all hunting during the period October 22 to March 31. In addition to the regular hunting days, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons. Wild turkey hunting is by permit only. Dove hunting on the field trial grounds will be prohibited from the second Sunday in September through the remainder of the hunting season.)

Robeson County--Robeson Game Land

Robeson County--Bullard and Branch Hunting Preserve Game Land

Sampson County--Sampson Game Lands

Stokes County--Sauratown Plantation Game Land

Wayne County--Cherry Farm Game Land, the use of centerfire rifles and handguns is prohibited

Yadkin County--Huntsville Community Farms Game Land

- (3) Any game may be taken on the following game lands during the open season, except that:
  - (A) Bears may not be taken on lands designated and posted as bear sanctuaries;
  - (B) Wild boar may not be taken with the use of dogs on such bear sanctuaries, and wild boar may be hunted only during the bow and arrow seasons, the muzzle-loading deer season and the regular gun season on male deer

on bear sanctuaries;

(C) On game lands open to deer hunting located in or west of the counties of Rockingham, Guilford, Randolph, Montgomery and Anson, the following rules apply to the use of dogs during the regular season for hunting deer with guns:

- (i) Except for the counties of Cherokee, Clay, Graham, Jackson, Macon, Madison, Polk, and Swain, game birds may be hunted with dogs.
- (ii) In the counties of Cherokee, Clay, Graham, Jackson, Macon, Madison, Polk, and Swain, small game in season may be hunted with dogs on all game lands except on bear sanctuaries.

(D) On Croatan, Jordan, and Shearon Harris Game Lands, and posted waterfowl impoundments on Goose Creek Game Lands, waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the applicable waterfowl seasons. After November 1, on the Pamlico Point, Campbell Creek, and Spring Creek impoundments, located on the Goose Creek Game Lands, a special permit is required for hunting on opening and closing days of the duck seasons, Saturdays of the duck seasons, and on Thanksgiving and New Year's day;

(E) On the posted waterfowl impoundments of Gull Rock Game Land hunting of any species of wildlife is limited to Mondays, Wednesdays, Saturdays; Thanksgiving, Christmas, and New Year's Days; and the opening and closing days of the applicable waterfowl seasons;

(F) On bear sanctuaries in and west of Madison, Buncombe, Henderson and Polk Counties dogs may not be trained or allowed to run unleashed between March 1 and the Monday on or nearest October 15;

(G) On Alcoa southeast of NC 49, Anson, Bachelor Bay, Chatham, Croatan, Jordan, Neuse River, New Lake, Pee Dee River, Pungo River, Shearon Harris and Shearon Harris, Gull Rock and Uwharrie Game Lands deer of either sex may be taken from the first Wednesday after Thanksgiving through the third Saturday after Thanksgiving.

(H) On Butner-Falls of Neuse and Person Game Lands waterfowl may be taken only on Tuesdays, Thursdays and Saturdays, Christmas and New Year's Days, and on the opening and closing days of the applicable waterfowl seasons;

(I) On Alcoa southeast of NC 49, Angola Bay, Butner-Falls of Neuse, Goose Creek, Hofmann Forest, Hofmann Forest and Sutton Lake and Uwharrie Game Lands deer of either sex may be taken from the first Wednesday after Thanksgiving through the following Saturday;

(J) ~~On Croatan and Neuse River Game Lands deer of either sex may be taken from the first Wednesday after Thanksgiving through the following Tuesday;~~

(K) ~~(K) On Croatan Game Lands in Jones and Craven counties~~ bear season extends from the second Monday in November to the following Saturday;

(L) ~~(M) On the posted waterfowl impoundments on the Jordan and Butner-Falls of Neuse game lands a special permit is required for all waterfowl hunting.~~

(M) ~~(N) Additional restrictions or modifications apply as indicated in parentheses following specific designations:~~

~~Alexander and Caldwell Counties--Brushy Mountains Game Lands~~

~~Anson County--Anson Game Land~~

Anson, Montgomery, Richmond and Stanly Counties--Pee Dee River Game Lands (Use of centerfire rifles prohibited in that portion in Anson and Richmond counties N. of US-74.)

Ashe County--Three Top Mountain Game Lands

Ashe County--Cherokee Game Lands

Ashe and Watauga Counties--Elk Knob Game Land

Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Jackson, Madison, McDowell, Mitchell, Transylvania, Watauga and Yancey Counties--Pisgah Game Lands (Harmon Den and Sherwood Bear Sanctuaries in Haywood County are closed to hunting raccoon, opossum and wildcat. Training raccoon and opossum dogs is prohibited from March 1 to the Monday on or nearest October 15 in that part of Madison County north of the French Broad River, south of US 25-70 and west of SR 1319.)

Bertie--Bertie County Game Land

Bertie, Halifax and Martin Counties--Roanoke River Wetlands (Hunting is by Permit only. Vehicles are prohibited on roads or trails except those operated on official Commission business or by permit holders.)

Bertie and Washington Counties--Bachelor Bay Game Lands

Beaufort and Pamlico Counties--Goose Creek Game Land

Brunswick County--Green Swamp Game Land  
Burke and Cleveland Counties--South Mountains Game Lands  
Caldwell, Watauga and Wilkes Counties--Yadkin Game Land  
Carteret, Craven and Jones Counties--Croatan Game Lands  
Chatham County--Chatham Game Land  
Chatham, Durham, Orange, and Wake Counties--Jordan Game Lands (On areas posted as "archery zones" hunting is limited to bow and arrow. Horseback riding, including all equine species, is prohibited. Target shooting is prohibited.)  
Chatham and Wake Counties--Shearon Harris Game Land  
Cherokee, Clay, Graham, Jackson, Macon, Swain and Transylvania Counties--Nantahala Game Lands. Raccoon and opossum may be hunted only from sunset Friday until sunrise on Saturday and from sunset until 12:00 midnight on Saturday on Fires Creek Bear Sanctuary in Clay County and in that part of Cherokee County north of US 64 and NC 294, east of Persimmon Creek and Hiwassee Lake, south of Hiwassee Lake and west of Nottely River; in the same part of Cherokee County dog training is prohibited from March 1 to the Monday on or nearest October 15. It is unlawful to train dogs or allow dogs to run unleased on any game land in Graham County between March 1 and the Monday on or nearest October 15.  
Chowan County--Chowan Game Land  
Cleveland County--Gardner-Webb Game Land  
Craven County--Neuse River Game Land  
Currituck County--North River Game Land  
Currituck County--Northwest River Marsh Game Land  
Dare County--Dare Game Land (No hunting on posted parts of bombing range. The use and training of dogs is prohibited from March 1 through June 30.)  
Davidson, Davie, Montgomery, Rowan and Stanly Counties--Alcoa Game Land  
Davidson County--Linwood Game Land  
Davidson, Montgomery and Randolph Counties--Uwharrie Game Land  
Duplin and Pender Counties--Angola Bay Game Land, deer of either sex may be taken from the first Wednesday after Thanksgiving through January 1  
Durham, Granville and Wake Counties--Butner-Falls of Neuse Game Land (Horseback riding, including all equine species, is prohibited. Target shooting is prohibited.)  
Gates County--Chowan Swamp Game Land  
Henderson, Polk and Rutherford Counties--Green River Game Lands  
Hyde County--Gull Rock Game Land  
Hyde County--Pungo River Game Land  
Hyde and Tyrrell Counties--New Lake Game Land  
Jones and Onslow Counties--Hofmann Forest Game Land  
Lee County--Lee Game Land  
McDowell and Rutherford Counties--Dysartsville Game Lands  
Moore County--Moore Game Land  
New Hanover County--Sutton Lake Game Land  
Pender County--Northeast Cape Fear Game Land  
Person County--Person Game Land  
Transylvania County--Toxaway Game Land (Deer of either sex may be taken with any legal weapon a bow and arrow on the Saturday prior to the first segment of the Western bow and arrow season by participants of the Disabled Sportsman Program.)  
Tyrrell and Washington Counties--Lantern Acres Game Land  
Vance County--Vance Game Land. (The use of dogs, centerfire rifles and handguns for hunting deer is prohibited on the Nutbush Peninsula tract of Vance Game Lands.)  
Wilkes County--Thurmond Chatham Game Land (Deer of either sex may be taken with bow and arrow on the Saturday prior to Northwestern bow and arrow season by participants of the Disabled Sportsman Program.)  
(4) Deer of either sex may be taken on the hunt dates indicated by holders of permits to participate in managed hunts scheduled and conducted in accordance with this Subparagraph on the game lands or portions of game lands included in the following schedule:  
Thursday and Friday of the week before Thanksgiving Week:  
Sandhills east of US 1  
Sandhills west of US 1  
Application forms for permits to participate in managed deer hunts on game lands, together with pertinent

information and instructions, may be obtained from hunting and fishing license agents and from the Wildlife Resources Commission. Completed applications must be received by the Commission not later than the first day of September next preceding the dates of hunt. Permits are issued by random computer selection, are mailed to the permittees prior to the hunt, and are nontransferable. A hunter making a kill must tag the deer and report the kill to a wildlife cooperator agent.

(5) The following game land and refuges are closed to all hunting except to those individuals who have obtained a valid and current permit from the Wildlife Resources Commission:

Bertie, Halifax and Martin Counties--Roanoke River Wetlands

Bertie County--Roanoke River National Wildlife Refuge

Burke County--John's River Waterfowl Refuge

Dare County--Dare Game Lands (Those parts of bombing range posted against hunting)

Davie--Hunting Creek Swamp Waterfowl Refuge

Gaston, Lincoln and Mecklenburg Counties--Cowan's Ford Waterfowl Refuge.

*Statutory Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-305.*

#### **.0004 FISHING ON GAME LANDS**

(a) Generally. Except as otherwise indicated herein, fishing on game lands which are open to fishing shall be in accordance with the statewide regulations. All game lands are open to public fishing except restocked ponds ~~on the New Hope Game Land~~ when posted against fishing, Hunting Creek Swamp Waterfowl Refuge, Grogan Creek in Transylvania County, and in the case of private ponds where fishing may be prohibited by the owners thereof. No trotline or set-hook or any net, trap, gig, bow and arrow or other special fishing device of a type mentioned in 15A NCAC 10C .0403 may be used in any of the impounded waters located on the Sandhills Game Land. ~~The game lands license is required to fish on designated public mountain trout waters on game lands.~~

(b) Designated Public Mountain Trout Waters

(1) Fishing Hours. It is unlawful to fish in designated public mountain trout waters on any game land from one-half hour after sunset to one-half hour before sunrise, except in Hatchery Supported Trout waters as stated in 15A NCAC 10C .0305(a), Delayed Harvest waters as stated in 15A NCAC 10C .0205(a)(5), and in the game lands sections of the Nantahala River located downstream from the Swain County line.

(2) Location. All waters located on the game lands listed in this Subparagraph are designated public mountain trout waters except Cherokee Lake, Grogan Creek, and Big Laurel Creek downstream from the US 25-70 bridge to the French Broad River, Pigeon River downstream of Waterville Reservoir to Tennessee line, Nolichucky River, and Mill Ridge Pond and Cheoah River downstream of Santeetlah Reservoir.

Three Top Mountain Game Land, Ashe County

Nantahala National Forest Game Lands in the Counties of Cherokee, Clay, Graham, Jackson, Macon, Swain and Transylvania

Pisgah National Forest Game Lands in the Counties of Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Madison, McDowell, Mitchell, Transylvania and Yancey

South Mountains Game Land in Burke County

Thurmond Chatham Game Land in Wilkes County

Toxaway Game Land in Transylvania County

(3) All designated public mountain trout waters located on the game lands listed in Subparagraph (b)(2) of this Rule are wild trout waters unless classified otherwise. [See 15A NCAC 10C .0205(a)(1)].

*Statutory Authority G.S. 113-134; 113-264; 113-272; 113-292; 113-305.*

\* \* \* \* \*

**Proposed Effective Date: May 1, 1996.**

**N**otice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Radiation Protection Commission intends to amend rule cited as 15A NCAC 11 .0349.

**Temporary:** This Rule was filed as a temporary amendment effective November 22, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.

**A Public Hearing will be conducted at 1:00 p.m. and 7:00 p.m. on January 9, 1996 at the Division of Radiation Protection, 3825 Barrett Drive, Room 101, Raleigh, NC 27609.**

**Reason for Proposed Action:** Amendment is needed to avoid imminent disruption of conventional waste treatment systems required for protection of public surface waters at two nuclear power plants. This amendment will allow

removal and disposal of slightly contaminated sludges as required for proper operation of these systems at the two nuclear power plants.

**Comment Procedures:** Written comments may be submitted to the Division of Radiation Protection, Mr. Richard M. Fry, P.O. Box 27687, Raleigh, NC 27611-7687. Written comments will be received until February 9, 1996.

**Fiscal Note:** This Rule does not affect the expenditures or revenues of local government or state funds.

## CHAPTER II - RADIATION PROTECTION

### SECTION .3000 - LICENSING OF RADIOACTIVE MATERIAL

#### .0349 EXEMPTIONS: WASTE MANAGEMENT BY GENERATORS

(a) Subject to the limitations in Paragraphs (b) and (c) of this Rule, any licensee is exempt from the provisions of G.S. 104E-6.1, and G.S. 104E-10.1, G.S. 104E-20(b), G.S. 104E-25, and G.S. 104E-26 with respect to the following waste management practices:

- (1) storage of waste incidental to transfer to a licensed low-level radioactive waste facility authorized to receive such waste;
- (2) storage of waste to allow for total decay of contained radioactive material prior to disposal as nonradioactive waste;
- (3) storage of waste to allow for partial decay of contained radioactive material prior to disposal, incineration or other treatment; or
- (4) compaction, incineration, treatment, packaging or disposal of waste as provided in the rules in Section .1600 of this Chapter.

(b) Except as provided in Paragraph (c) of this Rule, the exemptions in Paragraph (a) of this Rule shall apply only to a licensee:

- (1) who possesses and uses radioactive material pursuant to specific licenses issued by the agency and only to management by the licensee of waste generated incidental to such possession and use;
- (2) who is determined by the agency to be using sound waste management practices;
- (3) who is determined by the agency to be managing such low volumes or activity of waste that such exemptions will not endanger the public health or safety or the environment; and
- (4) whose combined waste management activities do not cause a radiation dose to the off-site public in excess of the limits stated in Rule .1223 of this Chapter.

(c) The exemptions in Paragraph (a) of this Rule shall also apply to on-site disposal of waste by persons who generate waste pursuant to a license issued by the U.S.

Nuclear Regulatory Commission, provided that:

- (1) the U.S. Nuclear Regulatory Commission determines that such on-site disposal is subject to regulation by the agency;
- (2) such persons satisfy the requirements in Sub-paragraphs (b)(2) and (b)(3) of this Rule;
- (3) such persons do not receive waste, generated by others or generated at other sites for the purpose of disposal;
- (4) such persons shall limit off-site dose to the public, resulting from all activities authorized by the agency and the U.S. Nuclear Regulatory Commission, to the limits stated in Rule .1223 of this Chapter or as prescribed by the U.S. Nuclear Regulatory Commission, 10 CFR Part 50 for U.S. Nuclear Regulatory Commission regulated activities, whichever is more restrictive; and
- (5) such persons apply for and receive a specific radioactive material license, issued by the agency pursuant to the rules in this Section, which authorizes such disposal pursuant to Rule .1628 of this Chapter; and
- (6) such persons provide notification to the agency prior to each disposal made pursuant to any radioactive material license described in Sub-paragraph (c)(5) of this Rule.

*Statutory Authority G.S. 104E-7(a)(10).*

\*\*\*\*\*

**N**otice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Commission for Health Services (EHNR-Solid Waste Section) intends to amend rules cited as 15A NCAC 13B .1401 - .1409; and repeal rules cited as 15A NCAC 13B .0901 - .0905.

**Proposed Effective Date:** April 1, 1996.

**A Public Hearing** will be conducted at 1:30 pm on January 18, 1996 at the Archdale Building, Ground Floor Hearing Room, 512 North Salisbury Street, Raleigh, NC.

**Reason for Proposed Action:** To meet federal requirements under 40 CFR 501 and 503 and to include standards for composting source separated organics.

**Comment Procedures:** All persons interested in these matters are invited to attend the public hearing. Written comments may be presented at the public hearing or submitted to Grady L. Balentine, Department of Justice, PO Box 629, Raleigh, NC 27602-0629. All written comments must be received by January 18, 1996. Persons who wish to speak at the hearing should contact Mr. Balentine at (919) 733-4618. Persons who call in advance of the hearing will be given priority on the speaker's list. Oral presentation

lengths may be limited depending on the number of people that wish to speak at the public hearing. Only persons who have made comments at a public hearing or who have submitted written comments will be allowed to speak at the Commission meeting. Comments made at the Commission meeting must either clarify previous comments or proposed changes from staff pursuant to comments made during the public hearing process.

**IT IS VERY IMPORTANT THAT ALL INTERESTED AND POTENTIALLY AFFECTED PERSONS, GROUPS, BUSINESSES, ASSOCIATIONS, INSTITUTIONS OR AGENCIES MAKE THEIR VIEWS AND OPINIONS KNOWN TO THE COMMISSION FOR HEALTH SERVICES THROUGH THE PUBLIC HEARING AND COMMENT PROCESS, WHETHER THEY SUPPORT OR OPPOSE ANY OR ALL PROVISIONS OF THE PROPOSED RULES. THE COMMISSION MAY MAKE CHANGES TO THE RULES AT THE COMMISSION MEETING IF THE CHANGES COMPLY WITH G.S. 150B-21.2(f).**

**Fiscal Note:** These Rules do not affect the expenditures or revenues of state or local government funds.

## CHAPTER 13 - SOLID WASTE MANAGEMENT

### SUBCHAPTER 13B - SOLID WASTE MANAGEMENT

#### SECTION .0900 - YARD WASTE FACILITIES

##### .0901 PROCEDURE FOR PERMIT

(a) All persons other than those listed in Rule .0902(2) are required to obtain a permit from the Division to accept, store, or compost yard waste. Application and operational requirements shall be in accordance with Rules .0903 and .0904 of this Section.

(b) The seal of a professional engineer is not required when submitting plans for a Yard Waste Facility permit. A minimum of three sets of plans shall be submitted with each application.

*Statutory Authority G.S. 130A-294; 130A-309.11.*

##### .0902 APPLICABILITY FOR YARD WASTE FACILITY

As of January 1, 1993, disposal of yard trash in a sanitary landfill shall be prohibited; however, yard trash which has been separated may be accepted at a sanitary landfill where the facility provides and maintains a separate yard waste composting area.

(1) **Applicability.** A permit is required for the construction and operation of facilities for yard waste which process and store more than 6,000 cubic yards of material quarterly. Yard waste may be composted with agricultural waste and silvicultural waste as defined in Rule .0101 of this Section. The Division does not regulate the composting of agricultural waste and silviculture waste, unless

mixed with yard waste.

(2) Activities not requiring a permit. A permit is not required for the following operations:

- (a) Backyard Composting.
- (b) Farming operations where the compost is produced from materials grown on the owner's land and is re used on the owner's land or in other farming operations and not offered to the public.
- (c) Facilities processing and storing less than 6,000 cubic yards of material quarterly, meeting the following conditions:
  - (i) Notification of the Solid Waste Section on an annual basis as to:
    - (A) Facility location;
    - (B) Name of owner and operator;
    - (C) Address of owner and operator;
    - (D) Phone number of owner and operator;
    - (E) Type of waste received;
    - (F) Amount of waste received;
    - (G) Composting process to be used; and
    - (H) Intended distribution of the finished product.
  - (ii) Agreement to operate in accordance with operational requirements as set forth in Rule .0904 of this Section, except for .0904(7).
  - (iii) Facility operates in accordance with all other state or local laws, ordinances, rules, regulations or orders.
  - (iv) Facility is not located over closed out disposal area.
- (d) Facilities storing or producing mulch from untreated wood waste which meet the following conditions:
  - (i) Facility is not located over closed out disposal site;
  - (ii) No more than one acre of land is utilized for storage of mulch;
  - (iii) Access to fire equipment or fire fighting services is provided; and
  - (iv) Safety measures are taken to prevent fires.

*Statutory Authority G.S. 130A-309.10; 130A-309.11.*

##### .0903 APPLICATION REQUIREMENTS FOR YARD WASTE FACILITIES

(a) Siting for a yard waste facility shall meet the following standards:

- (1) A site located in a flood plain shall not restrict the flow of the 100 year flood;
- (2) A site shall be maintained and operated in a manner which will protect the assigned water quality standards of the surface waters and ground waters;
- (3) A 50-foot minimum buffer will be required between all property lines and compost pad or storage area;
- (4) A 200 foot minimum buffer will be required

between compost pad or storage area and residences or dwellings;

(5) A 200 foot minimum buffer will be required between streams and rivers and compost pad or storage area;

(6) A 25 foot minimum distance will be required between compost areas and swales or berms to allow for adequate access of fire fighting equipment;

(7) Bottom elevation of compost pad and storage areas shall be a minimum of two feet above seasonal high water table;

(8) A site shall comply with all of the requirements of the local zoning ordinance;

(9) A site shall meet the requirements of the Sedimentation Pollution Control Law (15A NCAC 4);

(10) Access to the site for motor vehicles shall be controlled through the use of fences, gates, berms, natural barriers, or other means;

(11) A site shall not be located within any wetland as defined in the Clean Water Act, Section 404(b);

(12) Facility is not located over closed out disposal area.

Alternative buffers for an indoor facility may be approved on a case by case basis.

(b) The following information shall be required for reviewing an application for a yard waste facility:

(1) An aerial photograph or map on a scale of at least one inch equals 400 ft. accurately showing the area within one fourth mile of the proposed site's boundaries with the following specifically identified:

(A) Entire property owned or leased by the person proposing the facility;

(B) Land use and zoning;

(C) Location of all homes, industrial buildings, public or private utilities, and roads;

(D) Location of wells, watercourses, dry runs, and other applicable details regarding the general topography.

(2) A site plan on a scale of at least one inch equals 200 feet showing proposed areas for:

(A) Receiving;

(B) Processing/staging;

(C) Production;

(D) Curing and storage;

(E) Access controls;

(F) Description of drainage characteristics identifying both site run on and run off, ditches, and run off controls;

(G) Access road;

(H) Existing/Proposed contours (5' intervals).

(3) A written report that contains the following:

(A) Anticipated type, source, and composition of waste to be received;

(B) Provisions to maintain a clean and orderly

operation;

(i) Effective barrier to prevent unauthorized entry and dumping;

(ii) Signs posted with name of owner, operator, contact person and number in case of emergency and hours of operation;

(iii) Dust control measures;

(iv) Litter control measures;

(v) Fire protection and control measures; and

(vi) Odor control measures and practices;

(C) Designed capacity of the facility;

(D) Composting time duration, time from initiation of the composting process to completion and distribution;

(E) For static pile composting, typical windrow construction and aeration configurations;

(F) Method of aeration, including turning frequency or mechanical aeration equipment and aeration capacity;

(G) For in vessel composting systems, a process flow diagram of the entire process, including all major equipment and flow streams;

(H) Personnel required and their responsibilities;

(I) A description and an identification of the surface for the proposed site, area, and depth to seasonal high ground water;

(J) A description of the composting pad;

(K) A description of any monitoring that will occur involving the composting process or the site;

(L) Sources of waste input.

(4) An operational plan which contains the following:

(A) Explanation of daily operation and maintenance;

(B) Proposed equipment;

(C) Person responsible for operation, contact phone number, and address of facility;

(D) Control and inspection of incoming waste;

(E) Method of measuring incoming waste;

(F) Vehicle control and unloading;

(G) Method and sequence of processing the waste;

(H) Leachate and run off control measures (swales, greenways, ditches, etc.);

(I) Description of ultimate use for finished compost;

(J) Plan for back up system if poor quality product produced or change in market conditions develop.

Statutory Authority G.S. 130A-309.11.

#### .0904 OPERATIONAL REQUIREMENTS FOR YARD WASTE FACILITIES

Any person who maintains or operates a yard waste facility shall maintain and operate the site in accordance with the following practices, unless otherwise specified in the permit.

(1) ~~Plan and Permit Requirements:~~

- (a) ~~Construction plans and conditions of permit shall be followed.~~
- (b) ~~A copy of the permit, plans, and operational reports shall be available at all times.~~
- (c) ~~Facility shall be operated in a manner to control vectors.~~
- (d) ~~The amount of compost or mulch stored at the facility shall not exceed the designed storage capacity.~~
- (e) ~~Only yard waste and agricultural waste, silviculture waste or untreated wood waste may be accepted at the facility.~~
- (f) ~~If solid waste other than yard waste, agricultural waste, silviculture waste, or waste approved by the Division is left at the facility, it shall be separated and stored in a manner that prevents vector problems and shall be removed within seven days.~~
- (g) ~~Particle size of larger trash items such as limbs, trees, and stumps shall be reduced to promote composting.~~
- (h) ~~Yard waste must be removed from containers, unless the containers, bags, or another material has been approved by the Section.~~
- (i) ~~Compost must be aerated to maintain elevated temperatures which will produce a pathogen free compost product.~~
- (j) ~~Methods of composting which result in aerobic biochemical degradation of the organic material received shall be followed.~~
- (k) ~~Windrow construction and turning frequency shall be sufficient to maintain aerobic conditions to produce a compost product in the desired time frame.~~
- (l) ~~Compost shall receive final aeration upon completion of composting cycle to ensure stability before distribution.~~
- (m) ~~Compost areas shall not be located on Soil Group I Sandy Texture Soils (sand and loamy sand), unless otherwise approved by the Department.~~
- (n) ~~Odors shall be controlled and minimized.~~
- (o) ~~Static piles must be turned at least once during a 12 month interval.~~
- (p) ~~Compost process shall be maintained at 55 degrees Celsius (131 degrees F) for 48 to 96 hours (dependent upon waste stream).~~
- (q) ~~Nitrogen bearing waste (grass clippings, etc.) shall be incorporated into piles within 48 hour of on-site arrival.~~

(2) ~~Drainage Control Requirements:~~

- (a) ~~Surface water shall be diverted from the operational area.~~
- (b) ~~Windrows shall be constructed parallel to grade.~~
- (c) ~~The site be graded to prevent ponding in active composting areas.~~

(3) ~~Water Protection Requirements: Leachate shall be properly managed on site through best management practices. When necessary, a non-discharge or an NPDES permit may be required for disposal of any collected leachate.~~

(4) ~~Access and Security Requirements:~~

- (a) ~~The site shall be secured by means of gates, chains, berms, fences, or other security measures approved by the Division, to prevent unauthorized entry.~~
- (b) ~~The access road to the site shall be of all weather construction and maintained in good condition.~~

(5) ~~Sign Requirements:~~

- (a) ~~Signs shall provide information on owner, operator, contact person and number in case of emergency, and the hours during which the site is open for public use.~~
- (b) ~~Traffic signs or markers shall be provided as necessary to promote an orderly traffic pattern to and from the discharge area and to maintain efficient operating conditions.~~
- (c) ~~Signs shall be posted stating that only yard waste can be received at the site.~~

(6) ~~Safety Requirements:~~

- (a) ~~Open burning of solid waste shall be prohibited.~~
- (b) ~~Equipment shall be provided to control accidental fires or arrangements shall be made with the local fire protection agency to immediately provide fire fighting services when needed.~~
- (c) ~~Space shall be provided between piles to allow access for vehicles, including fire equipment.~~

(7) ~~Monitoring and Reporting Requirements:~~

- (a) ~~Monitoring (including groundwater, surface water, waste components, soil, or plant tissue analyses) may be required based on a case-by-case evaluation to insure protection of the environment.~~
- (b) ~~An annual report must be submitted to the Division which includes the following information:~~
  - (i) ~~Sources, type, quantity (by weight or volume) of waste received at the facility;~~
  - (ii) ~~The turning frequency (if applicable) and the timing and amount of water addition (if applicable);~~
  - (iii) ~~Sampling of temperature duration and changes during composting (if applicable);~~
  - (iv) ~~The quantity, by weight or volume, of compost or mulch produced;~~
  - (v) ~~The quantity, by weight or volume, of compost or mulch removed from the facility;~~
  - (vi) ~~A description of the end product and distribution or disposal.~~

Statutory Authority G.S. 130A-309.11.

**.0905 COMPOST CLASSIFICATION AND DISTRIBUTION**

(a) Compost made from yard waste or yard waste and agricultural waste or yard waste and silviculture waste which contains no pathogenic organism, is free from offensive odor, and contains no sharp particles which would cause injury to persons handling the compost, shall have unrestricted applications and distribution if directions are provided with the compost product.

(b) If the composting process contained animal manures, and the owner intends to sell the product as a fertilizer, the applicant must register with the North Carolina Department of Agriculture, Fertilizer Section.

Statutory Authority G.S. 130A-309.11.

**SECTION .1400 - SOLID WASTE (SW) COMPOST FACILITIES**

**.1401 REQUIREMENT FOR PERMIT**

(a) All persons whose purpose is or includes the production of compost from municipal solid waste or municipal solid waste co-composted with other wastes shall not construct, operate, expand or modify a facility until a currently valid permit for a municipal solid waste compost facility is issued by the Division. This provision also applies to facilities that accept, store, or produce compost or mulch from yard waste or from residues from agricultural products and processing. General Provisions, Siting, design, application, operational, distribution, and reporting requirements shall be in accordance with Rules .1402, .1403, .1404, .1405, .1406, .1407, and .1408 of this Section.

(b) In accordance with 15A NCAC 13B .0202(a)(3), the seal of a professional engineer is required when submitting plans for a Municipal Solid Waste Compost Facility Permit. Permit, unless otherwise stated in this Section. A minimum of four sets of plans shall be submitted within each application.

Statutory Authority G.S. 130A-309.11.

**.1402 GENERAL PROVISIONS FOR SW COMPOST FACILITIES**

(a) Applicability. The provisions of this Rule apply to compost facilities which that compost municipal solid waste or co-compost municipal solid waste with any of the following: treatment and processing wastes, yard waste, industrial process wastes, agricultural waste, residues from agricultural products and processing, or sludge sludges that are not classified as a solid waste, functioning as a nitrogen nutrient source. Facilities which that co-compost with sludge shall comply with all other applicable Federal or state regulations regarding sludge management at 40 CFR 501 and 503. Copies of the Code of Federal Regulations may be obtained from the Solid Waste Section at 401 Oberlin Road, Suite 150, Raleigh, NC 27605 at no cost.

(b) The provisions of this Rule Section do not apply to compost facilities which compost treatment and processing wastes, industrial process wastes, agricultural wastes, residues from agricultural products and processing or sludge with municipal solid waste functioning only as a bulking agent.

(c) The provisions of this Rule do not apply to compost facilities operated in accordance with the requirements for Yard Waste Facilities in Section .0900 of this Subchapter.

(d) Municipal Solid Waste Compost Facilities which have been permitted prior to the effective date of this Rule shall meet the requirements of this Rule by December 1, 1992 within 90 days of the effective date of this Rule.

(e) Municipal solid waste compost products produced outside the State of North Carolina and imported into the state shall comply with the requirements specified in Rule .1407 of this Section.

(f) Municipal solid waste compost shall count towards goals for the reduction of municipal solid waste prior to final disposal or incineration at a solid waste disposal facility as long as the final product is used or sold based upon the classification and distribution scheme outlined in Rule .1407 of this Section. Compost which that is disposed of shall not count toward waste reduction or recycling goals.

(g) Solid waste compost facilities shall be classified based on the types and amounts of materials to be composted.

(1) Type 1 facilities may receive yard and garden waste, vegetative agricultural waste, silvicultural waste, untreated and unpainted wood waste or any combination thereof.

(2) Type 2 facilities may receive pre-consumer meat-free food processing waste, source separated paper or other source separated specialty wastes, or any combination thereof that the Division considers to be low in pathogens and physical contaminants. Waste acceptable for a Type 1 facility may be composted at a Type 2 facility.

(3) Type 3 facilities may receive manures and other agricultural waste, meat, post consumer-source separated food wastes and other source separated specialty wastes or any combination thereof that the Division considers to be relatively low in physical contaminants, but may have high levels of pathogens. Waste acceptable for a Type 1 or 2 facility may be composted at a Type 2 facility.

(4) Type 4 facilities may receive mixed municipal solid waste, post collection separated or processed waste, industrial solid waste, non solid waste sludges functioning as a nutrient source or other similar compostable organic wastes or any combination thereof. Waste acceptable for a Type 1, 2 or 3 facility may be composted at a Type 4 facility.

(5) Small facilities are those that receive less than 1000 cubic yards of material for composting per quarter, and occupy less than two acres of land.

(6) Large facilities are those that receive 1000 cubic yards or more of material for composting per quarter or occupy two acres or more of land.

(g) A permit is not required for the following operations:

- (1) Backyard Composting.
- (2) Farming operations and silvicultural operations where the compost is produced from materials grown on the owner's land and re-used on the owner's land or in his associated farming operations and not offered to the public.
- (3) Type 1 Facilities processing and storing less than 6,000 cubic yards of yard waste quarterly, meeting the following conditions:
  - (A) Notification of the Solid Waste Section prior to operation and on an annual basis as to:
    - (i) Facility location;
    - (ii) Name, address and phone number of owner and operator;
    - (iii) Type and amount of wastes received;
    - (iv) Composting process to be used; and
    - (v) Intended distribution of the finished product.
  - (B) Agreement to operate in accordance with operational requirements as set forth in Rule .1406(a) and the setbacks in Rule .1404(a)(1) - (9) of this Section.
  - (C) Facility operates in accordance with all other state or local laws, ordinances, rules, regulations or orders.
  - (D) Facility is not located over closed-out disposal site.
- (4) Facilities storing or producing mulch from untreated wood waste which meet the following conditions:
  - (A) Facility is not located over closed-out disposal site;
  - (B) No more than one acre of land is utilized for storage and production of mulch;
  - (C) Access to fire equipment or fire-fighting services is provided; and
  - (D) Safety measures are taken to prevent fires.

Statutory Authority G.S. 130A-309.11.

.1404 SITING/DESIGN REQUIREMENTS FOR SW COMPOST FACILITIES

Facilities shall comply with the following siting and design requirements:

(a) (1) A site shall meet the following siting requirements at the time of initial permitting and shall continue to meet these requirements throughout the life of the permit only on the property owned or controlled by the applicant at the time of permitting:

- (1) (a) A site located in a floodplain shall not restrict the flow of the be located in a 100-year flood; floodplain, reduce the temporary storage capacity of the floodplain or result in washout of solid waste so as to pose a hazard to human life, wildlife, land or water resources;
- (2) (b) A 100-foot minimum buffer will be required between all property lines and compost areas, areas for Large and Type 3 and 4 facilities, 50-foot for Small Type 1 or 2 facilities.
- (3) (c) A 500-foot minimum buffer will be required between compost areas and residences or dwellings, dwellings not occupied by the permittee.
- (4) (d) A 200-foot minimum buffer will be required between compost areas and residences or dwellings not occupied by the permittee for Small Type 1 or 2 facilities.
- (5) (e) A 100-foot minimum buffer will be required between all wells and compost areas, except monitoring wells.
- (6) (f) A 50-foot minimum buffer will be required between perennial streams/rivers and compost areas, areas.
- (7) (g) A compost facility shall not be located in the watershed of a Class WS-I stream or the water quality critical area of a Class WS-II, WS-III, or WS-IV stream. A site shall not be located over a closed-out disposal area, unless a pad is designed over the area;
- (8) (h) Facilities located over closed-out disposal areas shall be designed with a pad adequate to protect the disposal area cap from being disturbed and there shall be no runoff from the pad onto the cap or side slopes of the closed out facility.
- (9) (i) A 25-foot minimum distance will be required between compost areas and swales or berms to allow for adequate access of fire fighting equipment.
- (10) (j) A site shall meet the following surface water requirements:
  - (A) (k) A site shall not cause a discharge of materials or fill materials into waters or wetlands of the state that is in violation of Section 404 of the Clean Water Act;
  - (B) (l) A site shall not cause a discharge of pollutants into waters of the state that is in violation

of the requirements of the National Pollutant Discharge Elimination System (NPDES), under Section 402 of the Clean Water Act; and

(C) (iii) A site shall not cause non-point source pollution of waters of the state that violates assigned water quality ~~standards~~ standards;

(11) (g) A site shall meet the following groundwater requirements:

(A) (i) A site shall not contravene groundwater standards as established under 15A NCAC 2L;

(B) (ii) ~~The bottom elevation of the composting and storage areas shall be a minimum of three feet above the seasonal high water table. Portions of a site used for waste receipt and storage, active composting, curing, and compost storage shall have a soil texture finer than loamy sand and, unless a pad is provided, the depth to the seasonal high water table shall be maintained at least 12 inches for a Type 1 or 2 facility and 24 inches for a Type 3 facility unless a pad is provided; and~~

(C) A pad shall be provided for portions of a Type 4 facility used for waste receiving and storage, active composting, curing, and compost storage.

(b) (2) For Subparagraphs (1)(a) (a)(2) through (1)(d) (a)(4) and (1)(g) Part (a)(10)(B) of this Rule, (dependent upon waste type, facility design, and regional topography) alternative buffers or requirements may be ~~approved or~~ deemed necessary by the Division.

(c) (3) A site shall meet the following design requirements:

(1) (a) A site shall not allow uncontrolled public access;

(2) (b) A site shall meet the requirements of the Sedimentation Pollution Control Law (15A NCAC 4);

(3) (c) A site shall meet the requirements of the Air Pollution Control Requirements (15A NCAC 2D) to minimize fugitive emissions and odors; and

(4) (d) A site shall be designed to minimize ~~nuisance~~ odors at the property boundary.

Statutory Authority G. S. 130A-309.11.

#### .1405 APPLICATION REQUIREMENTS FOR SW COMPOST FACILITIES

This Rule contains the information required for a municipal solid waste compost facility.

(a) The following information is required for reviewing an application for the initial permit to construct and operate a proposed Small Type 1, 2 or 3 solid waste compost facility:

(1) An aerial photograph or scaled drawing, where one inch is less than or equal to 400 feet, accurately showing the area within one-fourth mile of

the proposed site's boundaries with the following specifically identified:

(A) Entire property owned or leased by the person proposing the facility;

(B) Location of all homes, wells, industrial buildings, public or private utilities; roads; watercourses; dry runs; and other applicable information regarding the general topography within 500 feet of the proposed facility; and

(C) Land use zoning of the proposed site.

(2) A letter from the unit of government having zoning jurisdiction over the site which states that the proposed use is allowed within the existing zoning, if any, and that any necessary zoning approval or permit has been obtained.

(3) A discussion of compliance with siting and design standards in Rule .1404 of this Section.

(4) A detailed report indicating the following:

(A) Waste composition characterization, source and quantity of the solid waste to be composted, including the source and expected quantity of any bulking agent or amendment (if applicable), any expected recycle of bulking agent or compost, and any seasonal variations in the solid waste type or quantity; and

(B) For facilities which utilize natural soils as a pad, a soil evaluation of the site conducted by a soil scientist down to a depth of four feet, or to bedrock or evidence of a seasonal high watertable, to adequately evaluate the soils and depth of the seasonal high water table.

(5) Site plans at a scale where one inch is less than or equal to 100 feet to the inch that delineates the following:

(A) Existing and proposed contours, at intervals appropriate to the topography;

(B) Location and elevations of dikes, trenches, and other water control devices and structures for the diversion and controlled removal of surface water;

(C) Designated setbacks and property lines;

(D) Proposed utilities and structures; and

(E) Areas for unloading, processing, active composting, curing, and storing of material.

(6) A description of the operation of the facility, which must include at a minimum:

(A) Name, address and phone number for the person responsible for the operation of the facility;

(B) List of personnel required and the responsibilities of each position;

(C) Operation plan for the facility;

(D) Special precautions or procedures for operating during wind, heavy rain, snow, freezing or other adverse conditions;

(E) A description of actions to be taken to minimize noise, vectors, air borne particulates, and

(F) odors; and  
(F) A description of the ultimate use for the finished compost, method for removal from the site, and a contingency plan for disposal or alternative usage of residues or finished compost that cannot be used in the expected manner due to poor quality or change in market conditions.

(7) A report on the design of the facility, including:  
(A) Design capacity of the facility;  
(B) A process flow diagram of the entire facility, including the type, size, and location of all major equipment, and feedstock flow streams. The flow streams shall indicate the quantity of materials on a wet weight and volumetric basis;  
(C) The technology for measuring, shredding, mixing, and proportioning input materials;  
(D) Anticipated process duration, including receiving, preparation, composting, curing, and distribution;  
(E) A description of the location of all temperature, air and any other type of monitoring points, and the frequency of monitoring;  
(F) A description of how the temperature control and monitoring equipment will demonstrate that the facility meets the requirements in Rule .1406 Subparagraphs (a)(10), (11), or (12) of this Section, as appropriate for the feedstock;  
(G) The method of supplying and regulating air flow, including turning frequency or mechanical aeration equipment and aeration capacity; and  
(H) A description of the method to control surface water run-on and run-off; and the method to control, collect, treat, and dispose of leachate generated.

(8) A description of the label or other information source that meets the requirements of Rule .1407(k) of this Section.

(9) Plans and specifications for the facility, including manufacturer's performance data for all equipment selected.

(10) A detailed operation and maintenance manual outlining:  
(A) A quality assurance plan for the process and final product which lists the procedures used in inspecting incoming material; monitoring, sampling and analyzing the compost process and final product, testing schedule, and recordkeeping requirements;  
(B) Contingency plans detailing corrective or remedial action to be taken in the event of equipment breakdown; non-conforming waste delivered to the facility; spills, and undesirable conditions such as fires, vectors and odors; and

(C) A discussion of compliance with operational requirements as outlined in Rule .1406 of this Section, detailed operational information and instruction, an outline of reports to be submitted in compliance with this Section, and safety instructions.

(11) As built drawings where applicable.

(b) (4) The following information is required for reviewing an application for the initial permit to construct a proposed municipal Large or Type 4 solid waste compost facility:

(1) (a) An aerial photograph or scaled drawing, where one inch is less than or equal to 400 feet, accurately showing the area within one-fourth of the mile of the proposed site's boundaries with the following specifically identified:

(A) (i) Entire property owned or leased by the person proposing the site;  
(ii) Land use and zoning;  
(iii) Location of all homes, industrial buildings, public or private utilities and roads;  
(iv) Location of wells, watercourses, dry runs, and other applicable information regarding the general topography;

(B) Location of all homes, wells, industrial buildings, public or private utilities and roads, watercourses, dry runs, and other applicable information regarding the general topography; and

(C) Land use and zoning of the proposed site.  
(v) Floodplains and wetlands; and  
(vi) Bench marks.

(2) (b) A letter from the unit of government having zoning jurisdiction over the site which states that the proposal meets all of the requirements of the local zoning ordinance. proposed use is allowed within the existing zoning, if any and that any necessary zoning approval or permit has been obtained.

(3) (c) A discussion of compliance with siting and design standards in Rule .1404 Paragraphs (a) and (b) of this Section.

(4) (d) A detailed report indicating the following:

(i) Population and geographic area to be served (both present and projected);  
(A) (ii) Waste composition characterization, source and quantity of the solid waste to be composted, including the source and expected quantity of any bulking agent or amendment (if applicable), any expected recycle of bulking agent or compost, and any seasonal variations in the solid waste type or quantity;  
(B) (iii) For facilities which utilize natural soils as a liner, pad, a soil evaluation of the site conducted by a soil scientist down to a depth of seven four feet or to bedrock or evidence of a seasonal high water table, to adequately evalu-

ate the soils and depth of the seasonal high water table; and table.

(iv) The requirements of Subparagraphs (1)(d)(iii) of this Rule may be waived, if the composting site is to be located at a permitted sanitary landfill site, and the Division determines that sufficient hydrogeologic data has previously been submitted as part of the landfill permit.

(5) (e) Site plans at a scale where one inch is less than or equal to 200 100 feet (maximum five foot contours) to the inch that delineates the following:

(A) (f) Existing and proposed contours, at intervals appropriate to the topography;

(B) (ii) Location and elevations of dikes, trenches, and other water control devices and structures for the diversion and controlled removal of surface water;

(C) (iii) Designated setbacks, buffer zones and property lines;

(iv) Diversion and controlled removal of surface water;

(D) (v) Proposed utilities and structures;

(E) (vi) Access roads, details on traffic patterns;

(F) (vii) Areas for unloading, processing, active composting, curing, and storage of municipal solid waste compost; material;

(G) (viii) Areas for unloading, processing, and storing recyclables, household hazardous waste, and other materials, where applicable;

(H) (ix) Proposed surface and groundwater monitoring locations; and

(I) (x) Direction of prevailing winds;

(J) Flood plains and wetlands; and

(K) Benchmarks.

(6) (f) A description of the operation of the facility, which must include at a minimum:

(i) Estimated daily traffic flow to and from the facility;

(ii) Procedure for unloading trucks;

(A) Name, address and phone number for the person responsible for the operation of the facility;

(B) List of personnel required and the responsibilities of each position;

(C) Arrangements for the operation Operation plan for of the facility.

(D) (iv) Identification of personnel and their responsibilities;

(E) (v) A schedule for operation, including days and hours that the facility will be open, preparations before opening, and procedures to be followed after closing for the day;

(F) (vi) For mixed waste processing facilities, plan for removing recyclables in from the waste stream and a contingency plan for disposal or alternative management of recyclables;

(G) (vii) For mixed waste processing facilities, plan for removing and disposal of household hazardous waste in from the waste stream;

(H) (viii) Special precautions or procedures for operating during wind, heavy rain, snow, freezing or other adverse conditions;

(I) (ix) A description of actions to be taken to minimize noise, vectors, air borne particulates, and odors; and

(J) (x) A description of the ultimate use for the finished compost, method for removal from the site, and a contingency plan for disposal or alternative usage of residues or finished compost that cannot be used in the expected manner due to poor quality or change in market conditions; and, conditions.

(xi) A description of the label or other information source that outlines the type of waste contributing to the compost, a list of projected restrictions on compost use, and projected recommended safe uses and application rates for the compost.

(7) (g) A report on the design of the facility, including:

(A) Design capacity of the facility;

(B) (i) A process flow diagram of the entire facility, including the type, size, and location of all major equipment, the location of all temperature and all other monitoring points, and feed stock flow streams. The flow streams shall indicate the quantity of material on a wet weight and volumetric basis;

(C) (ii) A description and sizing of the storage facilities for amendment, bulking agent, solid waste, recyclables, household hazardous waste and finished compost;

(D) (iii) The technology for measuring, shredding, mixing, and proportioning input materials;

(E) (iv) The type, size, and associated detention time for the handling, processing, and storage equipment; Anticipated process duration, including receiving, preparation, composting, curing, and distribution;

(F) (v) The separation, processing, storage, and ultimate disposal of non-compostable materials, if applicable;

(G) (vi) A description of the location of all temperature, air and any other type of monitoring points, and the frequency of monitoring;

(H) (vii) A description of how the temperature control and monitoring equipment will demonstrate that the facility qualifies as a process to further reduce pathogens as outlined in Rule .1406 Subparagraph (9)(b) of this Section, meets the requirements in Rule .1406 Subparagraphs (a)(10), (11), or (12) of this Section, as appropriate for the feedstock;

(viii) The aeration capacity of the system;

(1) (ix) The method of supplying and regulating air flow; flow, including turning frequency or mechanical aeration equipment and aeration capacity;

(J) (x) A description of the air emission and control technologies;

(K) (xi) A description of the method to control surface water run-off; and the method to control, collect, treat, and dispose of leachate generated; and

(xii) Where applicable, a description of any seed material, including its quantity, quality, and frequency of use;

(xiii) If treatment and processing wastes, residues from agricultural products or processing, industrial process wastes, or sludges are to be composted: quantity, chemical and physical analysis, and recommendations from the Division of Environmental Management shall be submitted with the application; and

(L) (xiv) A description of any recycling or other material handling processes used at the facility.

(8) A description of the label or other information source that meets the requirements of Rule .1407(k) of this Section.

(9) (b) Engineering plans and specifications for the facility, including manufacturer's performance data for all equipment selected.

(c) (2) The following information is required for reviewing an application for a permit to operate a Type 4 or Large municipal solid waste composting facility:

(1) (a) Contingency plans detailing corrective or remedial action to be taken in the event of equipment breakdown; air pollution; non-conforming waste delivered to the facility; spills, and undesirable conditions such as fires, particulates, noise, vectors, odors, and unusual traffic conditions;

(2) (b) A detailed operation and maintenance manual. The manual must contain general design information, a discussion of compliance with operational requirements as outlined in Rule .1406 of this Section, detailed operational information and instruction, equipment maintenance, list of personnel, required personnel training, outline of reports to be submitted in compliance with this Section, and safety instructions;

(3) (e) A quality assurance plan for the process and final product which lists the procedures used in inspecting incoming materials; monitoring, sampling and analyzing the compost process and final product, testing schedule, and record keeping requirements;

(4) (d) A fact sheet and process flow diagram that summarizes actual equipment sizing, aeration capacity, detention times, storage capacity, and

flow rates (wet weight and volumetric) for the system and equipment chosen;

(5) (e) As-built drawings; and

(6) (f) A copy of all applicable local, state, and Federal permits and approvals necessary for the proper operation of the facility; facility; and

(7) (g) Product marketing and distribution plan.

(d) An application for a permit modification shall be required for changes in facility ownership, an increase in facility capacity, or the addition of new feedstock materials.

Statutory Authority G.S. 130A-309.11.

#### .1406 OPERATIONAL REQUIREMENTS FOR SW COMPOST FACILITIES

(a) Any person who maintains or operates a Small Type 1, 2 or 3 solid waste compost facility shall maintain and operate the site to conform with the following practices:

(1) Plan and Permit Requirements:

(A) Construction plans and conditions of permit shall be followed; and

(B) A copy of the permit, plans, and operational reports shall be maintained on site at all times.

(2) Adequate erosion control measures shall be practiced to prevent excessive on-site erosion and to control the movement of silt or contaminants from the site.

(3) Surface water shall be diverted from the operational, compost curing, and storage areas.

(4) Leachate shall be contained on site or properly treated prior to disposal.

(5) Access and Security Requirements:

(A) An operator shall be on duty at the site at all times while the facility is open for public use to ensure compliance with operational requirements;

(B) The access road to the site shall be of all-weather construction and maintained in good condition; and

(C) Access to facilities open to the public shall be controlled.

(6) A site shall only accept those solid wastes which it is permitted to receive.

(7) Safety Requirements:

(A) Open burning of solid waste is prohibited;

(B) Equipment shall be provided to control accidental fires and arrangements made with the local fire protection agency to immediately provide fire-fighting services when needed;

(C) A 25-foot minimum distance will be required between compost areas and swales or berms to allow for adequate access of fire fighting equipment; and

(D) Personnel training shall be provided to insure that all employees are trained in site specific safety, remedial, and corrective action procedures.

(8) Sign Requirements, for facilities open to the public:

(A) Signs providing information on waste that can be received, dumping procedures, the hours during which the site is open for public use, the permit number and other pertinent information shall be posted at the site entrance; and

(B) Signs shall be posted stating that no hazardous waste, asbestos containing waste, or medical waste can be received at the site.

(9) Monitoring Requirements:

(A) Specified monitoring and reporting requirements shall be met; and

(B) The temperature of all compost produced shall be monitored sufficiently to ensure that the pathogen reduction criteria is met.

(10) Compost process at Type 1 and 2 facilities shall be maintained at or above 55 degrees Celsius (131 degrees F) for 48 to 96 hours (dependent upon waste stream) and aerated to maintain elevated temperatures which will produce a pathogen free compost product.

(11) The temperature of the compost shall be maintained above 40 degrees Celsius (104 degrees F) for 14 days or longer and the average temperature for that time shall be higher than 45 degrees Celsius (113 degrees F) at Type 2, 3, and 4 facilities.

(12) The composting process at Type 3 facilities shall qualify as a process to further reduce pathogens. The following are acceptable methods:

(A) Using the window composting method, aerobic conditions must be maintained during the compost process. A temperature of 55 degrees Celsius (131 degrees F) or greater must be maintained in the windrow for at least 15 days. During the high temperature period, the windrow must be turned at least five times;

(B) Using the static aerated pile composting method, aerobic conditions must be maintained during the compost process. The temperature of the compost pile must be maintained at 55 degrees Celsius (131 degrees F) or greater for at least three days; or

(C) Using the within-vessel composting method, the temperature in the compost pile must be maintained at a minimal temperature of 55 degrees Celsius (131 degrees F) for three days.

(13) Miscellaneous Requirements:

(A) The linear coefficient of permeability of pads required in accordance with Rule .1404 (a)(7), (a)(10)(B) and (C) of this Section shall not be greater than  $1 \times 10^{-7}$  centimeters per second. If natural soils are used, the liner must be at least 18 inches thick;

(B) The finished compost shall meet the classifica-

tion and distribution requirements outlined in Rule .1407 of this Section;

(C) The quality of the final product will determine the allowable uses as outlined in Rule .1407 of this Section;

(D) The final product shall be approved by the Solid Waste Section as outlined in Rule .1407(i) of this Section;

(E) Non-compostable solid waste and unacceptable compost shall be disposed of in a manner approved by the Division; and

(F) The amount of compost stored at the facility shall not exceed the designed storage capacity.

(b) Any person who maintains or operates a Type 4 or Large municipal solid waste compost facility shall maintain and operate the site to conform with the following practices:

(1) Plan and Permit Requirements:

(A) (a) Construction plans and conditions of permit shall be followed; followed; and

(B) (b) A copy of the permit, plans, and operational reports shall be maintained on site at all times.

(2) Erosion Control Requirements:

(A) Adequate erosion control measures shall be practiced to prevent silt from leaving the site.

(B) Adequate erosion control measures shall be practiced to prevent excessive on-site erosion.

(2) Adequate erosion control measures shall be practiced to prevent excessive on-site erosion and to control the movement of silt or contaminants from the site.

(3) Surface water shall be diverted from the operational, compost curing, and storage areas.

(4) Leachate shall be contained on site or properly treated prior to disposal.

(5) Access and Security Requirements:

(A) (a) The site shall be secured by means of gates, chains, berms, fences, or other security measures approved by the Division, to prevent unauthorized entry.

(B) (b) An operator shall be on duty at the site at all times while the facility is open for public use to ensure compliance with operational requirements.

(C) (c) The access road to the site shall be of all-weather construction and maintained in good condition.

(6) Waste Acceptance

(A) A site shall only accept those solid wastes which it is permitted to receive.

(B) No hazardous waste, asbestos containing waste, or medical waste shall be accepted at the facility.

(6) A site shall only accept those solid wastes that it is permitted to receive.

(7) Safety Requirements:

(A) (a) Open burning of solid waste is prohibited.

(B) (b) Equipment shall be provided to control accidental fires and arrangements made with the local fire protection agency to immediately provide fire-fighting services when needed.

(C) A 25-foot minimum distance will be required between compost areas and swales or berms to allow for adequate access of fire fighting equipment.

(D) (e) Personnel training shall be provided to insure that all employees are trained in site specific safety, remedial, and corrective action procedures.

(8) Sign Requirements:

(A) (a) Signs providing information on waste that can be received, dumping procedures, the hours during which the site is open for public use, the permit number and other pertinent information shall be posted at the site entrance.

(B) (b) Traffic signs/markers shall be provided as necessary to promote an orderly traffic pattern to and from the discharge area and to maintain efficient operating conditions.

(C) (c) Signs shall be posted stating that no hazardous waste, asbestos containing waste, or medical waste can be received at the site.

(9) Monitoring Requirements:

(A) (a) Specified monitoring and reporting requirements shall be met.

(B) The temperature of each batch of compost produced shall be monitored sufficiently to ensure that the pathogen reduction criteria is met.

(B) The composting process shall qualify as a process to further reduce pathogens. The following are acceptable methods:

(i) Using the windrow composting method, aerobic conditions must be maintained during the compost process. A temperature of 131 degrees F (55 degrees Celsius) or greater must be maintained in the windrow for at least 15 days. During the high temperature period, the windrow must be turned at least five times.

(ii) Using the static aerated pile composting method, aerobic conditions must be maintained during the compost process. The temperature of the compost pile must be maintained at 131 degrees F (55 degrees Celsius) or greater for at least three days.

(iii) Using the within vessel composting method, the temperature in the compost pile must be maintained at a minimal temperature of 131 degrees F (55 degrees Celsius) for three days.

(10) Compost process at Type 1 and 2 facilities shall be maintained at or above 55 degrees Celsius (131 degrees F) for 48 to 96 hours (dependent upon waste stream) and aerated to maintain elevated temperatures which will produce a pathogen free compost product.

(11) The temperature of the compost shall be maintained above 40 degrees Celsius (104 degrees F) for 14 days or longer and the average temperature for that time shall be higher than 45 degrees Celsius (113 degrees F) at Type 2, 3, and 4 facilities.

(12) The composting process shall qualify as a process to further reduce pathogens for all Type 3 and Type 4 facilities. The following are acceptable methods:

(A) Using the windrow composting method, aerobic conditions must be maintained during the compost process. A temperature of 131 degrees F (55 degrees Celsius) or greater must be maintained in the windrow for at least 15 days. During the high temperature period, the windrow must be turned at least five times.

(B) Using the static aerated pile composting method, aerobic conditions must be maintained during the compost process. The temperature of the compost pile must be maintained at 131 degrees F (55 degrees Celsius) or greater for at least three days.

(C) Using the within-vessel composting method, the temperature in the compost pile must be maintained at a minimal temperature of 131 degrees F (55 degrees Celsius) for three days.

(13) Miscellaneous Requirements:

(a) The waste storage area and the active composting, curing, and compost storage areas shall be located on surfaces capable of minimizing releases to the surface immediately below these areas, to the surrounding land surface, and groundwater. If natural soils are used, the liner must be at least 18 inches thick and the liner coefficient of permeability must not be greater than  $1 \times 10^{-7}$  centimeters per second.

(A) The linear coefficient of permeability of pads required in accordance with Rule .1404 (a)(6) and (a)(8)(B) and (C) of this Section shall not be greater than  $1 \times 10^{-7}$  centimeters per second. If natural soils are used, the liner must be at least 18 inches thick.

(B) The finished compost shall meet the classification and distribution requirements outlined in Rule .1407 of this Section.

(C) The quality of the final product will determine the allowable uses as outlined in Rule .1407 of this Section.

(D) The final product shall be approved by the Solid Waste Section as outlined in Rule .1407 Subparagraph (6)(b)(i) of this Section.

(E) Non-compostable solid waste and unacceptable compost shall be disposed of in a manner

## PROPOSED RULES

approved by the Division.

(F) (f) The amount of compost stored at the facility shall not exceed the designed storage capacity.

Statutory Authority G.S. 130A-309.11.

### .1407 CLASSIFICATION/DISTRIBUTION OF MSW COMPOST PRODUCTS

~~Municipal solid waste compost shall be classified based on its physical and chemical properties, and degree of stabilization.~~

(1) Maximum allowable physical characteristics of marketable grades shall be as designated in Table 1:

TABLE 1

GRADE	MAXIMUM PARTICLE SIZE (inches)	MAXIMUM % FOREIGN MATTER % of dry Wt. Inerts
LIMIT	1.00	6.0

(2) Maximum allowable chemical characteristics codes of marketable grades shall be as designated in Table 2:

TABLE 2

PARAMETER (mg/kg dry wt.)	CODE 1	CODE 2
Mercury	10	15
Cadmium	10	25
Nickel	200	500
Copper	800	1200
Lead	250	1000
Chromium	1000	2000
Zinc	1000	2500
Total PCB's	2	10

(3) Degree of stabilization of marketable grades shall be as designated in Table 3:

(a) Table 3:

TABLE 3

DEGREE	MEETS	REDUCTION IN ORGANIC MATTER (ROM)
Fresh	PFRP	20-40 %
Semi-mature	PFRP	40-60 %
Mature	PFRP	over 60 %

(b) "ROM" means reduction in organic matter.

(4) Final grades for distribution and marketing of compost shall be based upon Table 1 thru Table 3 and shall be as follows:

(a) Unrestricted Grade shall have the following qualities:

(i) Meet the requirements as denoted in Subparagraph (1) of this Rule;

(ii) Maximum chemical characteristics Code 1 as denoted in Subparagraph (2) of this Rule;

(iii) Mature degree of stabilization as denoted in Subparagraph (3) of this Rule; and

(iv) Soluble salts less than 10 millimhos/centimeter (dry weight basis), unless marketed as a fertilizer.

(b) Restricted Professional Grade shall have the following qualities:

- Meet the requirements as denoted in Subparagraph (1) of this Rule;
- Chemical characteristics less than Code 2 as denoted in Subparagraph (2) of this Rule;
- Mature or semi mature degree of stabilization as denoted in Subparagraph (3) of this Rule; and
- Soluble salts less than 10 millimhos/centimeter (dry weight basis), unless marketed as a fertilizer.

(c) Restricted Land Application Grade shall have the following qualities:

- Meet the requirements as denoted in Subparagraph (1) of this Rule;
- Chemical characteristics not to exceed values in Code 2 as denoted in Subparagraph (2) of this Rule;
- Mature, semi mature, or fresh degree of stabilization as denoted in Subparagraph (3) of this Rule; and
- Soluble salts less than 10 millimhos/centimeter (dry weight basis).

(5) For applications where repeated use of the compost can be expected, such as in agricultural applications or land reclamation, the maximum accumulation of heavy metal applied to the soils shall be as designated in Table 4:

TABLE 4

Range of Cation Exchange Capacity of Soil (CEC)				
(CEC)	1-5	6-10	11-15	> 15
Maximum Cumulative Loading Rate (lbs/aere)				
HEAVY METAL				
Lead	65	125	250	500
Zinc	50	75	125	250
Copper	25	45	65	125
Nickel	25	45	65	125
Cadmium	2	3	4	5

The Cation Exchange Capacity of the soil (prior to placement of compost products) may be determined by procedures accepted by the North Carolina Department of Agriculture or EPA test method 9081.

(6) Distribution of the defined grades shall be as follows:

(a) Grades:

- Unrestricted Grade Compost shall have unlimited, unrestricted distribution (bagged or bulk). This product may be distributed directly to the public.
- Restricted Professional Grade Compost shall be restricted to distribution to commercial, agricultural, or governmental operations.
- Restricted Land Application Grade shall be restricted to distribution for land and mine reclamation, silviculture, and agriculture (on non food chain crops) projects.

(a) Compost shall not be applied to the land or sold or given away in a bag or other container if the concentration of any metal exceeds the concentration in Table 1.

TABLE 1

Metals	Concentration mg per kg
--------	----------------------------

<u>Arsenic</u>	<u>75</u>
<u>Cadmium</u>	<u>85</u>
<u>Chromium</u>	<u>3000</u>
<u>Copper</u>	<u>4300</u>
<u>Lead</u>	<u>840</u>
<u>Mercury</u>	<u>57</u>
<u>Nickel</u>	<u>420</u>
<u>Selenium</u>	<u>100</u>
<u>Zinc</u>	<u>7500</u>

(b) Maximum allowable metal concentrations if compost is to be sold or given away in a bag or other container shall not exceed the concentration for the metals in Table 2:

TABLE 2

<u>Metals</u>	<u>Concentration</u> <u>mg per kg</u>
<u>Arsenic</u>	<u>41</u>
<u>Cadmium</u>	<u>39</u>
<u>Chromium</u>	<u>1200</u>
<u>Copper</u>	<u>1500</u>
<u>Lead</u>	<u>300</u>
<u>Mercury</u>	<u>17</u>
<u>Nickel</u>	<u>420</u>
<u>Selenium</u>	<u>36</u>
<u>Zinc</u>	<u>2800</u>

(c) For applications where repeated use of the compost can be expected, such as in agricultural applications or land reclamation, the maximum accumulation of metals applied to the soils shall be as designated in Table 3:

TABLE 3

<u>Metals</u>	<u>Concentration</u> <u>kg per ha</u>
<u>Arsenic</u>	<u>41</u>
<u>Cadmium</u>	<u>39</u>
<u>Chromium</u>	<u>3000</u>
<u>Copper</u>	<u>500</u>
<u>Lead</u>	<u>300</u>
<u>Mercury</u>	<u>17</u>
<u>Nickel</u>	<u>420</u>
<u>Selenium</u>	<u>100</u>
<u>Zinc</u>	<u>1000</u>

(d) The product of the concentration of each metal in the compost and the annual whole compost application rate shall not cause the annual metal loading rate for the metals in Table 4 to be exceeded.

TABLE 4

<u>Metals</u>	<u>Concentration</u> <u>kg/ha/yr</u>

<u>Arsenic</u>	2.0
<u>Cadmium</u>	1.9
<u>Chromium</u>	150
<u>Copper</u>	75
<u>Lead</u>	15
<u>Mercury</u>	0.85
<u>Nickel</u>	21
<u>Selenium</u>	5.0
<u>Zinc</u>	140

(e) Solid Waste Compost shall be classified based on table 5.

TABLE 5

<u>Grade</u>	<u>ManMade Inerts</u> <u>% dry wt. of</u> <u>inerts</u>	<u>Pathogen</u> <u>Reduction</u>	<u>Metal</u> <u>Concentration</u>
<u>A</u>	<u>6</u>	<u>PFRP</u>	<u>Table 2</u>
<u>B</u>	<u>&gt;6</u>	<u>NA</u>	<u>Table 1</u>

(f) Solid Waste Compost shall not be distributed if the temperature of the compost will rise more than 35 degrees F above ambient temperature.

(g) Man made inerts shall not exceed 1 inch in size.

(h) Distribution of the defined grades shall be as follows:

- (1) Grade A compost shall have unlimited, unrestricted distribution (bagged or bulk). This product may be distributed directly to the public;
- (2) Grade B compost shall be restricted to distribution for land and mine reclamation, silviculture, and agriculture (on non-food chain crops) projects; and
- (3) Compost or mulch made from yard waste or yard waste and vegetative agricultural waste or silviculture waste which contains minimal pathogenic organisms, is free from offensive odor, and contains no sharp particles which would cause injury to persons handling the compost, shall have unrestricted applications and distribution if directions are provided with the compost product.

(i) (4) Municipal solid waste compost products may not be distributed or marketed until the permittee has provided adequate test data to the Division as outlined in Rule .1408 of this Section. Within 30 days of receipt of the test data, the Division shall approve or deny the distribution and marketing of the product based upon the compost classification and distribution scheme. As long as the test data required in Rule .1408 of this Section continues to verify that compost is produced to the specifications of this Rule, the Division's approval to distribute the compost shall be ongoing.

(j) (e) If the owner intends to market the product as a fertilizer or liming agent, the applicant must register with the North Carolina Department of Agriculture, Fertilizer Section, in addition to meeting the requirements of this Section. The product must meet the NCDA's minimal nutrient requirements.

(k) (d) If the owner intends to market distribute the product as a mulch and does not register with the North Carolina Department of Agriculture, Fertilizer Section, the owner must shall provide instructions to the user on any restrictions on use and recommended safe uses and application rates. The following information must shall be provided on a label, label or an information sheet and a copy of the label shall be submitted to the Solid Waste Section:

- (1) (i) Percent moisture content;
- (2) (ii) Classification grade as outlined in Paragraph (4) (e) of this Rule;
- (3) (iii) Recommended uses;
- (4) (iv) Application rates;
- (5) (v) Calcium Carbonate equivalent (for products which have been lime stabilized); and
- (6) (vi) Restrictions on usage;
- (7) Soluble salts; and
- (8) Total N (for products containing sludge).

(e) If the owner intends to use the final product for land application projects or where repeated use of the compost can be expected, he shall comply with all local, state, and Federal rules and regulations concerning land application. The

maximum accumulative loading rates shall be as denoted in Subparagraph (5) of this Rule.

Statutory Authority G.S. 130A-309.11.

**.1408 METHODS FOR TESTING AND REPORTING REQUIREMENTS**

The intent of this Rule is to define the methods and requirements for measuring and reporting the chemical and physical characteristics of the final compost product.

(a) (1) The compost product shall be sampled and analyzed as follows:

(1) (a) A composite sample of the compost produced at each compost facility shall be analyzed at intervals of every 20,000 tons of compost produced or every three months, whichever comes first, for parameters as designated in Table 5: 6 of this Rule. Standard methods equivalent to those in Table 6 may be approved by the Division.

**TABLE 5**

PARAMETER	UNIT	METHOD
Moisture	%	EPA 160.3
Reduction in Organic Matter	%	see Subparagraph (f) of this Rule
Organic Matter	%	EPA 160.4
Foreign Matter	%	see Subparagraph (d) of this Rule
Cadmium	mg/kg dry wt.	EPA 3050/7130
Copper	mg/kg dry wt.	EPA 3050/7210
Lead	mg/kg dry wt.	EPA 3050/7420
Nickel	mg/kg dry wt.	EPA 3050/7520
Zinc	mg/kg dry wt.	EPA 3050/7950
Chromium	mg/kg dry wt.	EPA 3050/7140
Mercury	mg/kg dry wt.	EPA 3050/7471
Fecal Coliform	#organisms/100ml	Standard 9222
Soluble Salts	millimhos/cm	Solubridge 1&gml.2 ratio
PCB's	mg/kg dry wt.	EPA 8080
pH	standard	EPA 9045

The parameters listed in Table 5: 6 of this Rule may also be determined by methods accepted by the North Carolina Department of Agriculture.

**TABLE 6**

PARAMETER	UNIT	FACILITY	TEST METHOD
Moisture	%	all	EPA 160.3
Organic Matter	%	all	EPA 160.4
Foreign Matter	%	all	see Subparagraph (d) of this Rule
Arsenic	mg/kg dry wt.	Type 4	EPA 3050/7130
Cadmium	mg/kg dry wt.	all	EPA 3050/7210
Chromium	mg/kg dry wt.	Type 4	EPA 3050/7420
Copper	mg/kg dry wt.	all	EPA 3050/7520
Lead	mg/kg dry wt.	all	EPA 3050/7950
Mercury	mg/kg dry wt.	Type 4	EPA 7471A
Nickel	mg/kg dry wt.	all	EPA 3050/7471
Selenium	mg/kg dry wt.	Type 4	EPA 3050/7740

<u>Zinc</u>	<u>mg/kg dry wt.</u>	<u>all</u>	<u>EPA 3050/7471</u>
<u>Fecal Coliform</u>	<u>#organisms/100ml</u> <u>millimhos/cm or Mhos x</u> <u>10(-5)cm standard</u>	<u>all</u>	<u>Solubridge 1 &amp; gm 1.2 ratio</u> <u>EPA 9045</u>
<u>pH</u>	<u>standard</u>	<u>all</u>	<u>water pH</u>
<u>CaCO<sub>3</sub> equivalent</u>	<u>%</u>	<u>see (A)</u>	<u>AOAC</u>
<u>Total N</u>	<u>%</u>	<u>see (B)</u>	<u>Kjeldahl</u>

(A) CaCO<sub>3</sub> equivalent required when a feedstock has been lime stabilized.

(B) Total N required for products containing sludge subject to 40 CFR 503.

(2) (b) Sample collection, preservation, and analysis shall assure valid and representative results pursuant to a Division-approved quality assurance plan. At least three individual samples (of equal volume) shall be taken from each batch produced in separate areas along the side of the batch. Each sampling point shall be at a depth of two to six feet into the pile from the outside surface of the pile. Samples shall be composited and accumulated over a three month period or at intervals of every 20,000 tons or product produced, whichever comes first.

(3) (e) The Division may decrease or increase the parameters to be analyzed or the frequency of analysis based on monitoring date, changes in the waste stream or processing, or the potential presence of toxic substances.

(4) (d) Foreign matter content shall be determined by passing a dried, weighed sample of the compost product through a one-quarter inch screen. EPA Method 160.3 shall be used to dry the sample. The material remaining on the screen shall be visually inspected, and the foreign matter that can be clearly identified shall be separated and weighed. The weight of the separated foreign matter divided by the weight of the total sample shall be determined and multiplied by 100. This shall be the percent dry weight of the foreign matter content.

(e) ~~A composite, heterogeneous sample of the incoming waste stream (feedstock), which has been shredded or otherwise reduced in particle size, shall be used for determination of the initial organic matter (OM) used in the calculation for percent reduction in organic matter (% ROM). The organic matter content of this composite sample is determined by measuring the volatile solids content using EPA Method 160.4.~~

(f) ~~The reduction in organic matter is determined by comparing the organic matter content of the feedstock into the composting process and the organic matter content of the compost product (using EPA Method 160.4). The amount of reduction is determined as a percent of the original amount contained in the feedstock using the following calculation:~~

$$\% \text{ ROM} = 100 [ 1 - (OMK(100 OM)/OM(100 OMK)) ]$$

~~where, % ROM = percent reduction in organic matter, OM = percent organic matter of the feedstock, and OMK = percent organic matter of compost product.~~

(b) (2) Record Keeping: Facility owners or operators shall record and maintain, maintain records for a minimum of ~~three five years, the following information regarding their activities for each month of operation of the facility years.~~ Records shall be available for inspection by Division personnel during normal business hours and shall be sent to the Division upon request.

(1) (a) Daily operational records must be maintained, which include, at a minimum, temperature data (length of the composting period) and quantity of material processed;

(2) (b) Analytical results on compost testing;

(3) (e) The quantity, type and source of waste received;

(4) (d) The quantity and type of waste processed into compost;

(5) (e) The quantity and type of compost produced by product classification; and

(6) (f) The quantity and type of compost removed for use or disposal, by product classification, and the market or permitted disposal facility.

(c) (3) Annual Reporting: An annual report ~~for the period July 1 to June 30~~ shall be submitted to the Division ~~by August 1, 1996 and every August 1 thereafter which contains: and shall contain:~~

(2) (e) The facility name, address, and permit number;

(b) ~~The year covered;~~

(2) (e) The total quantity in tons, with sludge values expressed in dry weight, and type of waste received at the facility during the year covered by the report, including tons of waste received from local governments of origin;

(3) (d) The total quantity in tons, with sludge values expressed in dry weight, and type of waste processed into compost during the year covered by the report;

- (4) (e) The total quantity in tons and type of compost produced at the facility, by product classification, during the year covered by the report;
- (5) (f) The total quantity in tons and type of compost removed for use or disposal from the facility, by product classification, along with a general description of the market if for use during the year covered by the report;
- (6) (g) The total quantity in tons, and the type of waste removed from the facility and disposed of;
- (7) (h) ~~Condensed monthly~~ Monthly temperature monitoring to support Rule .1406 ~~Subparagraph~~ (9)(e) of this Section; and
- (8) (i) ~~Condensed yearly~~ Yearly totals of solid waste received and composted shall be reported back to the local government of origin for respective annual recycling ~~reporting~~ reporting; and
- (9) Results of tests required in Table 6 of this Section.

Statutory Authority G.S. 130A-309.11.

#### .1409 APPROVAL OF ALTERNATIVE PROCEDURES AND REQUIREMENTS

(a) ~~The~~ An owner or operator of a composting facility, subject to the provisions of this Rule, may request in writing the approval of an alternative procedure for the facility or the compost that is produced. The following information shall be submitted to the Solid Waste Section:

- (1) The specific facility for which the exception is requested;
- (2) The specific provisions of this Section for which the exception is requested;
- (3) The basis for the exception;
- (4) The alternate procedure or requirement for which the approval is sought and a demonstration that the alternate procedure or requirement provides equivalent protection of the public health and the environment; and
- (5) A demonstration of the effectiveness of the proposed alternate procedure.

(b) An individual may request in writing the approval of a ~~municipal~~ solid waste composting pilot or demonstration project for the purpose of evaluating the feasibility of such a project. The following information shall be submitted to the Solid Waste Section:

- (1) The owner, operator, location, and contact numbers for the project;
- (2) The ~~specific primary~~ waste stream for which the project is to be evaluated evaluate;
- (3) The specific time frame for the project;
- (4) The specific amount of each type of waste or bulking material to be composted;
- (5) The basis for running the pilot or demonstration project;
- (6) A description of all testing procedures to be used;
- (7) A description of the process to be ~~used and the expected final usage or disposal of the final product; and used, including the method of composting and details of the method of aeration;~~
- (8) ~~The expected final usage or disposal of the final product; and~~
- (9) An outline of the final report to be submitted

to the Solid Waste Section upon completion of the project.

(c) For Paragraph (a) of this Rule, the Division will review alternative procedures only to the extent that adequate staffing is available.

(d) ~~Permits will not be required for primary and secondary school educational projects that take place on the school grounds and that receive less than one yard of material per week.~~

Statutory Authority G.S. 130A-309.11.

\* \* \* \* \*

**N**otice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - Commission for Health Services intends to amend rules cited as 15A NCAC 18A .1720, .1722 - .1723, .1725 - .1727, .2702, .3101 - .3106; 19C .0601 - .0603, .0605 - .0609; 25 .0213 and adopt rule cited as 15A NCAC 19C .0611.

**Proposed Effective Date:** April 1, 1996.

**A Public Hearing will be conducted at 1:30 pm on January 18, 1996 at the Archdale Building, Ground Floor Hearing Room, 512 North Salisbury Street, Raleigh, NC.**

**Reason for Proposed Action:** 15A NCAC 18A .1720, .1722 - .1723, .1725 - .1727 - to make existing wording more clear.

15A NCAC 18A .2702 - This action is being taken to bring the rule into conformance with the new statutory requirements. In this legislative year, meat markets were moved to G.S. 130A-248, which requires a transitional permit. The statute in which meat markets were previously, did not require a transitional permit.

15A NCAC 18A .3101 - Revisions are proposed to provide clarification and greater consistency with state law. Also to require expanded laboratory reporting and to clarify the different trigger mechanisms for reporting, identification, investigation, notification and abatement of lead poisoning hazards and also to add lead poisoning hazard standards for

lead-contaminated dust.

15A NCAC 18A .3102 - Revisions are proposed to provide greater consistency with state law, to list the specific information that must be reported and to allow for electronic submission of blood lead data.

15A NCAC 18A .3103 - Revisions are proposed in order to clarify requirements for owners, managing agents and tenants.

15A NCAC 18A .3104, .3105 - Revisions are proposed in order to provide greater consistency with state law.

15A NCAC 18A .3106 - Revisions are proposed in order to clarify requirements for owners and managing agents and to provide greater consistency with state law.

15A NCAC 19C .0601 - .0603, .0605 - .0609, .0611 - The proposed rule changes will allow for persons whose removal activities are limited to asbestos-containing roofing products to become accredited in a subcategory. These subcategories will be roofing worker and roofing supervisor. The training course length for accreditation will be one day and three days, respectively. these changes will bring the rules in line with OSHA regulations. All other changes are for clarification purposes.

15A NCAC 25 .0213 - To clarify the frequency of inspections required for Commissaries, Limited Food Service Establishments and Mobile Food Units. Also to require public swimming pools and spas which operate beyond the usual summer season to be inspected two times per year. To delete requirements for inspections of meat markets closed for 60 days or more.

**Comment Procedures:** All persons interested in these matters are invited to attend the public hearing. Written comments may be presented at the public hearing or submitted to Grady L. Valentine, Department of Justice, PO Box 629, Raleigh, NC 27602-0629. All written comments must be received by January 18, 1996. Persons who wish to speak at the hearing should contact Mr. Valentine at (919) 733-4618. Persons who call in advance of the hearing will be given priority on the speaker's list. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing. Only persons who have made comments at a public hearing or who have submitted written comments will be allowed to speak at the Commission meeting. Comments made at the Commission meeting must either clarify previous comments or proposed changes from staff pursuant to comments made during the public hearing process.

**IT IS VERY IMPORTANT THAT ALL INTERESTED AND POTENTIALLY AFFECTED PERSONS, GROUPS, BUSINESSES, ASSOCIATIONS, INSTITUTIONS OR AGENCIES MAKE THEIR VIEWS AND OPINIONS KNOWN TO THE COMMISSION FOR HEALTH SERVICES THROUGH THE PUBLIC HEARING AND COMMENT PROCESS, WHETHER THEY SUPPORT OR OPPOSE ANY OR ALL PROVISIONS OF THE PROPOSED RULES. THE COMMISSION MAY MAKE CHANGES TO THE RULES AT THE COMMISSION MEETING IF THE CHANGES COMPLY WITH G.S. 150B-21.2(F).**

**Fiscal Note:** These Rules do not affect the expenditures or revenues of state or local government funds.

## CHAPTER 18 - ENVIRONMENTAL HEALTH

### SUBCHAPTER 18A - SANITATION

#### SECTION .1700 - PROTECTION OF WATER SUPPLIES

##### .1720 WATER SUPPLIES

(a) A water supply for which requirements are established in this Subchapter shall be from a ~~source located, constructed, maintained, and operated in accordance with this Section or from a~~ community water supply approved by the Department ~~regulated~~ pursuant to 15A NCAC 18C or from a supply located, constructed, maintained, and operated in accordance with this Section.

(b) ~~The requirements found in Rules .1720(c) through 1728 shall not apply to community water supplies.~~

(c) The following setback requirements shall apply:

- (1) A well shall not be located in an area generally subject to flooding. Areas which have a propensity for flooding include those with concave slope, alluvial or colluvial soils, gullies, depressions or drainage ways.
- (2) A well constructed on or after July 1, 1993 shall be located at a minimum horizontal distance from:
  - (A) (a) Septic tank or nitrification field; 100 ft.
  - (B) (b) Other subsurface ground absorption waste disposal; 100 ft.
  - (C) (c) Industrial or municipal sludge spreading or wastewater irrigation site; 100 ft.
  - (D) (d) Watertight sewage or liquid-waste collection or transfer facility; 50 ft.
  - (E) (e) Other sewage or liquid-waste collection or transfer facility; 100 ft.
  - (F) (f) Animal feedlot or manure pile; 100 ft.
  - (G) (g) Fertilizer, pesticide, herbicide or other chemical storage area; 100 ft.
  - (H) (h) Non-hazardous waste storage, treatment or disposal lagoon; 100 ft.
  - (I) (i) Sanitary landfill; 500 ft.
  - (J) (j) Other non-hazardous solid waste landfill; 100 ft.
  - (K) (k) Animal barn; 100 ft.
  - (L) (l) Building foundation; 50 ft.
  - (M) (m) Surface water body; 50 ft.
  - (N) (n) Chemical or petroleum fuel underground storage tank regulated under 15A NCAC 2N:
    - (i) with secondary containment; 50 ft.
    - (ii) without secondary containment; 100 ft.
  - (O) (o) Any other source of groundwater contamination. 100 ft.
- (3) For a well constructed prior to July 1, 1993, the minimum horizontal distances specified in Parts

(c)(2)(A),(B),(D), and (L) (2)(a),(b),(d), and (f) of this Rule shall be reduced to no less than the following:

- (A) (a) Septic tank or nitrification field; 50 ft.
- (B) (b) Other subsurface ground absorption waste disposal system; 50 ft.
- (C) (c) Water-tight sewage or liquid-waste collection or transfer facility; 25 ft.
- (D) (d) Building foundation; 25 ft.

(4) A well constructed prior to July 1, 1993 serving an establishment regulated under 15A NCAC 18A in operation prior to July 1, 1993 shall be required to meet only the following minimum horizontal distance requirements:

- (A) (a) Septic tank or nitrification field; 50 ft.
- (B) (b) Other subsurface ground absorption waste disposal system; 50 ft.

(5) An owner, licensee or permittee shall be prohibited from placing or having placed a new source of contamination within the minimum horizontal distances in ~~Items~~ Subparagraphs (c)(1)-(4) of this Rule.

(6) If different minimum horizontal distances requirements are set by the Division of Environmental Management pursuant to 15A NCAC 2C .0118 and .0119, those minimum horizontal distance requirements shall be used. The owner, licensee or permittees shall provide a written copy of the adjusted minimum horizontal distance requirements from the Division of Environmental Management to the local health department.

Statutory Authority G.S. 95-225; 130A-5(3); 130A-228; 130A-230; 130A-235; 130A-236; 130A-248; 130A-257.

## .1722 WELL HEAD PROTECTION

- (a) The base plate of a pump placed directly over the well shall be designed to form a watertight seal with the well casing or pump foundation.
- (b) In an installation where the pump is not located directly over the well, the annular space between the casing and pump intake or discharge piping shall be closed with a watertight seal designed specifically for this purpose.
- (c) The well shall be vented at the well head to allow for pressure changes within the well except when a suction lift type pump is used. Any vent pipe or tube shall be screened or otherwise designed to prevent the entrance of insects or other foreign materials.
- (d) For a well constructed after July 1, 1993, a hose bib shall be installed at the well head for obtaining samples. In the case of offset jet pump installations, the hose bib shall be installed directed downward on the pressure side of the jet pump piping. A vacuum breaker or backflow prevention device shall be installed on the hose bib.
- (e) For a well constructed after July 1, 1993, a continuous bond concrete slab or well house concrete floor extend-

ing at least three feet horizontally around the outside of the well casing shall be provided. The minimum thickness for the concrete slab or floor shall be four inches. The slab or floor shall slope to drain away from the well casing.

(f) Any establishments permitted or licensed after July 1, 1993 shall have a continuous bond concrete slab or well house concrete floor extending at least three feet horizontally around the outside of the well casing shall be provided. The minimum thickness for the concrete slab or floor shall be four inches. The slab or floor shall slope to drain away from the well casing.

Statutory Authority G.S. 95-225; 130A-5(3); 130A-228; 130A-230; 130A-235; 130A-236; 130A-248; 130A-257.

## .1723 SPRINGS

(a) If a spring is serving an establishment regulated under 15A NCAC 18A on or before July 1, 1993, the spring shall be approved unless a violation of Rule .1725 is identified. If Rule .1725 of this Section is violated, violated and violation remains after disinfection in accordance with Rule .1724(b) of this Section, or the removal of chemical constituents, the spring shall comply with all requirements of Paragraph (b) of this Rule. However, a spring which is in violation of Rule .1725(c) of this Section may be equipped with a continuous disinfection device in accordance with Rule .1727 of this Section.

(b) For a spring developed after July 1, 1993, to serve an establishment regulated under 15A NCAC 18A, Any establishment permitted or licensed under 15A NCAC 18A after July 1, 1993, and any establishment permitted or licensed before that date developing a new spring shall meet the requirements of 2 NCAC 9C .0703, except Paragraphs (a), (b) and (f) shall apply. 2 NCAC 9C .0703, except Paragraphs (a), (b) and (f) are hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the N.C. Department of Environment, Health, and Natural Resources, Environmental Health Services Section, 1330 St. Mary's Street, Raleigh, North Carolina. Copies may be obtained from the Environmental Health Services Section at no cost.

(c) Springs approved pursuant to Paragraph (b) of this Rule shall not be connected to the establishment until compliance with this Section has been completed and the Department receives certification from an engineer licensed to practice in North Carolina that the spring has been constructed in accordance with the approved plans and specifications.

Statutory Authority G.S. 95-225; 130A-5(3); 130A-228; 130A-230; 130A-235; 130A-236; 130A-248; 130A-257.

## .1725 WATER QUALITY

(a) Prior to the initial use of a water supply, or after construction, maintenance, repairs, pump installation, or a report of a positive coliform sample, and after no disinfee-

~~tant can be measured with a test kit to measure free chlorine residual, two consecutive bacteriological water samples taken at least 48 hours apart shall be collected by the Department and submitted to the Division of Laboratory Services of the Department of Environment, Health, and Natural Resources Resources, a local health department approved by the Department, or another laboratory certified pursuant to 15A NCAC 20D for analysis. Prior to collecting the sample, the water shall be tested and shall be negative for chlorine residual. The water supply shall not be used until at least two consecutive bacteriological samples have tested negative for coliform bacteria. For the purposes of this Rule, confirmation means another positive sample result following the initial positive sample unless the last positive sample was preceded by two consecutive negative samples.~~

(b) The water supply shall be deemed an imminent hazard under the following circumstances:

- (1) confirmation of the presence of fecal coliform bacteria.
- (2) determination by the Environmental Epidemiology Section of the Department that the presence of chemical constituents are present at levels that constitute an imminent hazard as defined in G.S. 130A-2(3).

(c) The water supply shall be deemed unsafe for use under the following conditions:

- (1) confirmation of the presence of total coliform.
- (2) determination by the Environmental Epidemiology Section of the Department that the presence of chemical constituents are present at levels in violation of water quality standards found in 15A NCAC 18C .1500 and do not constitute an imminent hazard as defined in G.S. 130A-2(3).

(d) ~~When a water sample is positive for coliform bacteria, two consecutive negative samples for coliform bacteria collected by the Department at least 48 hours apart shall be required prior to approval of the supply. After a positive sample has been followed by two consecutive negative samples collected at least 48 hours apart, follow-up samples shall be collected by the Department at least once each quarter, while the supply is in use, for one year. There shall be no treatment procedures between the two consecutive negative samples.~~

(e) ~~Follow-up samples shall be collected by the Department at least once each quarter for one year, while the supply is in use for one year following the previous positive sample.~~

*Statutory Authority G.S. 95-225; 130A-5(3); 130A-228; 130A-230; 130A-235; 130A-236; 130A-248; 130A-257.*

#### **.1726 EMERGENCY SUPPLY SYSTEMS**

A water supply serving an establishment regulated under 15A NCAC 18A which is in violation of Rule .1725 of this Section may be replaced by an emergency supply system for a time period not to exceed three months provided the

Public Water Supply Section determines that the emergency supply system meets all the following requirements:

- (1) The source of water used by the emergency supply is approved by the Public Water Supply Section of the Division of Environmental Health; shall meet the requirements of 15A NCAC 18C;
- (2) Containers, hoses, pumps, lines, or other means of conveyance used to transport the water is disinfected with a chlorine solution of at least 100 mg/l of chlorine prior to being placed into use and after each transfer of water;
- (3) A chlorine residual of no less than 0.2 mg/l of free chlorine is maintained at all times and the owner, licensee, or permittee shall maintain a log to record the level of free chlorine residual at least twice a day while the facility is in operation; and
- (4) The emergency supply system is sampled for bacteriological analysis at least every other week by the Department and at least weekly by the owner, permittee, or licensee. All samples shall be submitted to the laboratory section of the Department or another laboratory certified by the Department for the analysis. A copy of all sample reports collected by the owner, permittee, or licensee shall be submitted to the local health department having jurisdiction within three days of receipt of the report.

*Statutory Authority G.S. 95-225; 130A-5(3); 130A-228; 130A-230; 130A-235; 130A-236; 130A-248; 130A-257.*

#### **.1727 CONTINUOUS DISINFECTION**

(a) A supply which is in violation of Rule .1725(c)(1) of this Section may be used provided that the supply shall be continuously disinfected and a chlorine residual is maintained of at least 0.2 mg/l is maintained by use of equipment designed for this purpose. An operator shall be required at all times when a water supply uses for a water supply using continuous disinfection. The operator shall hold a valid certificate issued by the N.C. Water Treatment Facility Operators Certification Board.

(b) The owner, operator, or permittee shall provide to the Department a statement from the water supply operator that a supply using continuous disinfection has a minimum chlorine residual of 0.2 mg/l and a chlorine contact time of at least 20 minutes.

(c) A disinfection device shall not be used to comply with a violation of Rule .1725 (b)(1) of this Section.

*Statutory Authority G.S. 95-225; 130A-5(3); 130A-228; 130A-230; 130A-235; 130A-236; 130A-248; 130A-257.*

#### **SECTION .2700 - SANITATION OF MEAT MARKETS**

##### **.2702 PERMITS**

- (a) No person shall operate a meat market within the

State of North Carolina who does not possess an unrevoked permit from the Department.

(b) No permit to operate shall be issued until a sanitary inspection by a representative of the Department shows that the establishment complies with these sections.

(c) ~~Permits issued to one person are not transferable to others.~~

(c) (d) Permits are issued by and inspections made by local health ~~the Department, department sanitarians, who are authorized representatives of the Department.~~

(d) ~~Upon transfer of ownership or lease of an existing meat market, the Department shall complete an inspection. If the establishment satisfies all the requirements of the rules, a permit shall be issued. If the establishment does not satisfy all the requirements of the rules, a permit shall not be issued. However, if the Department determines that the noncompliant items are construction or equipment problems that do not represent a threat to the public health, a transitional permit may be issued. The transitional permit shall expire 90 days after the date of issuance, unless suspended or revoked before that date, and shall not be renewed. Upon expiration of the transitional permit, the owner or operator shall have corrected the noncompliant items and obtained a permit, or the meat market shall not continue to operate.~~

(e) ~~The Department may impose conditions on the issuance of a permit or transitional permit. Conditions may be specified for one or more of the following areas:~~

- (1) ~~the categories of meat food products or poultry products served;~~
- (2) ~~time schedules in completing minor construction items;~~
- (3) ~~modification or maintenance of water supplies;~~
- (4) ~~use of facilities for more than one purpose;~~
- (5) ~~continuation of contractual arrangements upon which basis the permit was issued;~~
- (6) ~~submission and approval of plans for renovation;~~
- (7) ~~any other conditions necessary for a meat market to remain in compliance with this Section.~~

(f) (e) If a permit or transitional permit has been suspended, the suspension shall be lifted after the Department has inspected the meat market and found that the violations causing the suspension have been corrected. ~~A permit shall be immediately revoked in accordance with G.S. 130A-23(d) for failure of the facility to maintain a minimum grade of C. A permit may otherwise be suspended or revoked in accordance with 130A-23. If a permit or transitional permit has been revoked, a new permit to operate shall be issued only after the Department has inspected the meat market establishment has been resurveyed by a sanitarian and found it to comply with this Section. This resurvey will be conducted within a reasonable length of time after the request is made by the operator.~~

Statutory Authority G.S. 130A-228.

## SECTION .3100 - LEAD POISONING PREVENTION IN CHILDREN PROGRAM

### .3101 DEFINITIONS

As used in this article, unless the context requires otherwise:

- (1) "Abatement" means the elimination or control of a lead poisoning hazards hazard by methods approved by the Department.
- (2) "Confirmed blood lead level" means a blood lead concentration determined by two consecutive capillary blood tests or one venous blood test.
- (3) (2) "Day care facility" means a structure or structures used as a school, nursery, child care center, clinic, treatment center or other facility serving the needs of children under six years of age including ~~the grounds, any outbuildings, outbuilding or other structure or surrounding land that may have been contaminated from such outbuildings or other structures appurtenant to the facility, structures, accessible to children under six years of age.~~
- (4) (3) "Department" means the Department of Environment, Health, and Natural Resources or its authorized agent.
- (5) (4) "Dwelling" or "Dwelling unit" means a structure, all or part of which is designed for human habitation, including ~~any outbuildings or other structures, or surrounding land that may have been contaminated from such outbuildings or structures, accessible to children under six years of age, the common areas, the grounds, any outbuildings, or other structures appurtenant to the dwelling or dwelling unit.~~
- (6) (5) "Elevated blood lead level" means: ~~means a blood lead of 20 ug/dL or greater.~~
- (a) For the purposes of reporting by laboratories, a blood lead level of 1 microgram per deciliter or greater; or
- (b) For the purposes of identification, investigation, and notification of lead poisoning hazards, a persistent blood lead level of 15-19 micrograms per deciliter; or
- (c) For the purposes of identification, investigation, notification, and abatement of lead poisoning hazards, a confirmed blood lead level of 20 micrograms per deciliter or greater.
- (6) "Frequently visited" means presence at a dwelling, school or day care facility for eight hours or more a week for three or more weeks, or for 80 hours within a period of 10 consecutive days.
- (7) "Lead poisoning hazard" means the presence of readily accessible or mouthable lead-bearing substances measuring 1.0 milligram per square centimeter or greater by X-ray fluorescence analyzer or 0.5 percent or greater by chemical analyses analysis (AAS); or 400 parts per million or greater in soil; or 15 parts per billion or greater in drinking water; water; or 100 micrograms per

(8) square foot or greater for dust on floors; or 500 micrograms per square foot or greater for dust on window sills; or 800 micrograms per square foot or greater for dust in window troughs.

(9) "Managing agent" means any person who has charge, care, or control of a building or part thereof in which dwelling units or rooming units are leased.

(9) "Mouthable lead-bearing substance" means any substance on interior or exterior surfaces or fixtures five feet or less from the floor or ground that form a protruding corner or similar edge, or protrude ½ inch or more from a flat wall surface, or are free-standing, containing lead-contaminated dust at a level that constitutes a lead poisoning hazard. Mouthable surfaces or fixtures include doors, door jams, stairs, stair rails, windows, window sills, and baseboards.

(10) "Persistent blood lead level" means a blood lead concentration determined by a capillary or venous blood test performed at least 12 weeks after a confirmatory blood test.

(11) (9) "Readily accessible lead-bearing substance" means capable of being chewed, any interior or exterior substance containing lead at a level that constitutes a lead poisoning hazard which can be ingested, or inhaled by a child under six years of age. Readily accessible substances include deteriorated paint that is peeling, chipping, cracking, flaking, or chalking. Readily accessible substances also include soil and water.

(12) "Regularly visits" means presence at a dwelling, dwelling unit, school, or day care facility for at least two days a week for more than three hours per day at least twice a month.

(13) "Supplemental Address" means a dwelling, dwelling unit, school, or day care facility where a child with an elevated blood lead level regularly visits or attends. Supplemental address also means a dwelling, dwelling unit, school, or day care facility where a child resided, regularly visited, or attended within the six months immediately preceding the determination of an elevated blood lead level.

name, date of birth, sex, race, address, and medicaid number, if any; the name, address, and telephone number of the requesting health care provider; the name, address, and telephone number of the testing laboratory; the laboratory results, the specimen type--venous or capillary; the laboratory sample number, and the dates the sample was collected and analyzed. Such reports may be made by electronic submissions.

*Statutory Authority G.S. 130A-131.5.*

### .3103 EXAMINATION AND TESTING

When the Department has a reasonable suspicion that a child less than six years of age who resides in, regularly visits or attends a dwelling, dwelling unit, school, or day care facility has an elevated blood lead level, the Department shall require that child to be examined and tested within 30 days. The Department shall require from the owner, managing agent, or tenant of the dwelling, dwelling unit, school, or day care facility information on each child residing in, regularly visiting, or attending, the dwelling or facility. The information required shall include each child's name and date of birth, the names and addresses of each child's parents, legal guardian, or full-time custodian. The owner, managing agent, or tenant shall submit the required information within 10 days of receipt of the request from the Department.

*Statutory Authority G.S. 130A-131.5.*

### .3104 INVESTIGATION TO IDENTIFY LEAD POISONING HAZARDS

(a) When the Department learns of an elevated blood lead level the Department shall conduct an investigation to identify the lead poisoning hazards to children. The Department shall also conduct an investigation when it reasonably suspects that a lead poisoning hazard to children exists in a dwelling, dwelling unit, school, or day care facility occupied, attended, or frequently regularly visited by a child less than six years of age. The Department shall investigate the dwelling, dwelling unit, school, or day care facility where the child with the elevated blood lead level resides, regularly visits, or attends. The Department shall also investigate the supplemental addresses of the child who has an elevated blood lead level.

(b) In conducting an investigation, the Department may take samples of surface materials or other materials suspected of containing lead for analysis and testing. If samples are taken, chemical determination of the lead content of the samples shall be by atomic absorption spectroscopy (AAS) or equivalent methods approved by the Department. The Department shall also conduct an investigation when it reasonably suspects that a lead poisoning hazard to children exists in a dwelling, dwelling unit, school, or day care facility occupied, regularly visited, or attended by a child less than six years of age.

(c) In conducting an investigation, the Department may

*Statutory Authority G.S. 130A-131.5.*

### .3102 REPORTS OF ELEVATED BLOOD LEVELS IN CHILDREN

All laboratories that perform blood lead tests doing business in this State shall report to the Department elevated blood lead levels for children less than six years of age and for individuals where the age is whose ages are unknown at the time of testing. Reports shall be made within five working days after test completion on forms provided by the Department or on self-generated reports containing the equivalent information. forms containing: the child's full

take samples of surface materials or other materials suspected of containing lead for analysis and testing. If samples are taken, chemical determination of the lead content of the samples shall be by atomic absorption spectroscopy or equivalent methods approved by the Department.

Statutory Authority G.S. 130A-131.5.

**.3105 NOTIFICATION**

Upon determination that a lead poisoning hazard exists, the Department shall give written notice of the lead poisoning hazard to the owner or managing agent of the dwelling, dwelling unit, school or day care facility and to all persons residing in or attending the ~~unit~~ dwelling or facility. The written notice to the owner or managing agent shall include recommended a list of possible methods of abatement of the lead poisoning hazard.

Statutory Authority G.S. 130A-131.5.

**.3106 ABATEMENT**

(a) Upon determination that a child less than six years of age has an elevated a confirmed blood lead level of 20 micrograms per deciliter or greater and that child resides in, attends, or frequently regularly visits, a dwelling, dwelling unit, school or day care facility containing lead poisoning hazards, the Department shall require abatement of the lead poisoning hazard hazards. The Department shall also require the abatement of the lead poisoning hazards identified at the supplemental addresses of a child less than six years of age with a confirmed blood lead level of 20 micrograms per deciliter or greater.

(b) When abatement is required under Paragraph (a) of this Rule, The the owner or managing agent shall submit a written lead poisoning hazard abatement plan to the Department within 14 days of receipt of the lead poisoning hazard notification and shall obtain written approval of the plan prior to initiating abatement. If the owner or managing agent does not submit an abatement plan within 14 days, the Department shall issue an abatement order requiring submission of an abatement plan within five days of receipt of the order. If the abatement plan submitted fails to meet the requirements of this Rule, the Department shall issue an abatement order requiring submission of a modified abatement plan. The order shall indicate the modifications which must be made to the abatement plan and the date by which the modified plan must be submitted to the Department. The lead poisoning hazard abatement plan or the abatement order shall comply with Paragraphs (c), (d) and (e) of this Rule. Abatement shall be completed within 60 days of the Department's approval of the abatement plan. If the abatement activities are not completed within 60 days as required, the Department shall issue an order requiring completion of abatement activities. The owner or managing agent shall notify the Department and occupants of the dates of abatement activities.

(c) The following methods of abatement of lead poisoning hazards in paint are prohibited:

- (1) stripping paint on-site with methylene chloride-based solutions;
- (2) torch or flame burning;
- (3) heating paint with a heat gun above 800 degrees Fahrenheit;
- (4) covering with new paint, ~~contact paper~~, or non-vinyl wallpaper unless all readily accessible lead-based paint has been removed;
- (5) abrasive blasting; or
- (6) waterblasting when average wind speed exceeds 15 miles per hour unless vertical tarpaulins extend from the ground to four feet above the surface to be abated.

(d) All lead-containing waste and residue of the abatement of lead shall be removed and disposed of by the person performing the abatement in accordance with applicable federal, state, and local laws and rules.

(e) All abatement plans shall require that the lead poisoning hazard be reduced to at least the following levels:

- (1) Floor lead dust levels are less than 100 micrograms per square foot;
- (2) Window sill lead dust levels are less than 500 micrograms per square foot;
- (3) Window ~~well~~ trough lead dust levels are less than 800 micrograms per square foot;
- (4) Soil lead levels are less than 400 parts per million; and
- (5) Drinking water lead levels less than 15 parts per billion.

(f) The Department shall verify by visual inspection that the approved abatement plan has been completed. The Department may also verify plan completion by residual lead dust monitoring and soil or drinking water lead level measurement.

Statutory Authority G.S. 130A-131.5.

**CHAPTER 19 - HEALTH: EPIDEMIOLOGY**

**SUBCHAPTER 19C - OCCUPATIONAL HEALTH**

**SECTION .0600 - ASBESTOS HAZARD MANAGEMENT PROGRAM**

**.0601 GENERAL**

(a) The definitions contained in G.S. 130A-444 and the following definitions shall apply throughout this Section:

- (I) "Abatement Designer" means a person who is directly responsible for planning all phases of an asbestos abatement design from abatement site preparation through complete disassembly of all abatement area barriers. In addition to meeting the accreditation requirements of Rule .0602(c)(5) of this Section, the abatement designer may be subject to the licensure require-

ments for a Registered Architect as defined in G.S. 83A or a Professional Engineer as defined in G.S. 89C.

(2) "Abatement Project Monitoring Plan" means a written project-specific plan for conducting visual inspections and ambient and clearance air sampling.

(3) "Air Monitor" means a person who implements the abatement project monitoring plan, collects ambient and clearance air samples, performs visual inspections, or monitors and evaluates asbestos abatement projects.

(4) "Asbestos Abatement Design" means a written or graphic plan prepared by an accredited abatement designer specifying how an asbestos abatement project will be performed, and includes, but is not limited to, scope of work and technical specifications. The asbestos abatement designer's signature and accreditation number shall be on all such abatement designs.

(5) "Completion Date" means the date on which all activities on a permitted asbestos removal requiring the use of accredited workers and supervisors are complete, including the complete disassembly of all removal area barriers.

(6) "Emergency Renovation Operation" as defined in 40 CFR Part 61.141 as adopted in Rule .0609 of this Section.

(7) "Inspector" means a person who examines buildings or structures for the presence of asbestos containing materials, collects bulk samples or conducts physical assessments of the asbestos containing materials. A person whose asbestos inspection activities are limited to roofing products is not considered an inspector under this definition if the person is accredited as a roofing supervisor under these Rules.

(8) "Installation" means any building or structure or group of buildings or structures at a single site under the control of the same owner or operator.

(9) "Management Planner" means a person who interprets inspection reports, conducts hazard assessments of asbestos containing materials or prepares written management plans.

(10) "Nonscheduled Asbestos Removal" means an asbestos removal required by the routine failure of equipment, which is expected to occur within a given period based on past operating experience, but for which an exact date cannot be predicted.

(11) "Program" means the Asbestos Hazard Management Branch Health Hazards Control Branch within the NC Department of Environment, Health, and Natural Resources.

(12) "Public Area" means as defined in G.S. 130A-444(7). Any area to which access by the general public is usually prohibited, or is usually limited to access by escort only, shall not constitute a "public area."

(13) "Regulated Asbestos Containing Material" as defined in 40 CFR Part 61.141 as adopted in Rule .0609 of this Section.

(14) "Start Date" means the date on which activities on a permitted asbestos removal project requiring the use of accredited workers and supervisors begin, including removal area isolation and preparation or any other activity which may disturb asbestos containing materials.

(15) "Supervising Air Monitor" means a person who prepares a written abatement project monitoring plan and implements the plan or ensures that the plan is implemented by an air monitor working under his supervision. The supervising air monitor directs, coordinates and approves all activities of air monitors working under his supervision. The supervising air monitor may also perform the duties of an air monitor.

(16) "Supervisor" means a person who is a 'competent person' as defined in 29 CFR 1926.1101(b) and adopted by 13 NCAC 7F .0201 and amendments or recodifications as adopted by the North Carolina Department of Labor, and who is an 'on-site representative' as defined in 40 CFR Part 61.145(c)(8) as adopted in Rule .0609 of this Section, and who performs the duties specified therein.

(17) "Under the direct supervision" means working under the immediate guidance of an accredited individual who is responsible for all activities performed.

(18) "Worker" means a person who performs asbestos abatement under the direct supervision of an accredited supervisor.

(19) "Working day" means Monday through Friday. Holidays falling on any of these days are included in the definition.

(20) "Class II Asbestos Work" means as defined in 29 CFR 1926.1101(b) and incorporated by reference in Paragraph (c) of this Rule.

(21) "Roofing Worker" means a person whose duties with regard to asbestos are limited to Class II asbestos work involving the removal of roofing products that are classified as regulated asbestos containing material.

(22) "Roofing Supervisor" means a supervisor as defined in Subparagraph (a)(16) of this Rule, whose duties with regards to asbestos are limited to Class II asbestos work involving only roofing products that are classified as regulated asbestos containing material. This person may also perform asbestos roofing inspection activities which are limited to roofing products, including the collection of bulk samples.

(23) "Roofing Products" means asphalt built-up

roofing systems, roofing membranes, asphalt shingles, cement shingles, roofing cements, mastics, coatings, panels, light weight roofing concrete, and flashings.

(b) Asbestos management activities conducted pursuant to this Section shall comply with "AHERA" as defined in G.S. 130A-444(1) and 40 CFR Part 763, Subpart E and Appendices, as applicable. 40 CFR Part 763, Subpart E is hereby incorporated by reference, including any subsequent amendments and editions. This document is available for inspection at the Department of Environment, Health, and Natural Resources, ~~Asbestos Hazard Management Branch, 441 North Harrington Street Health Hazards Control Branch, 2728 Capital Blvd.~~, Raleigh, North Carolina 27603 27604. Copies may be obtained from the Government Printing Office by writing to the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7954, at a cost of twenty-six dollars (\$26.00).

(c) 29 CFR 1926.1101 is hereby incorporated by reference, including any subsequent amendments and editions. This document is available for inspection at the Department of Environment, Health, and Natural Resources, Health Hazards Control Branch, 2728 Capital Blvd., Raleigh, North Carolina 27604. Copies may be obtained from the Government Printing Office by writing to the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7954, at a cost of twenty-six dollars (\$26.00).

Statutory Authority G.S. 130A-5(3); 130A-451; P.L. 99-519.

## .0602 ACCREDITATION

(a) No person shall perform asbestos management activities until that person has been accredited by the Program in the appropriate accreditation category, except as provided for in G.S. 130A-447, (b) and (c).

(b) An applicant for accreditation shall meet the provisions of the "EPA Model Contractor Accreditation Plan" contained in 40 CFR Part 763, Subpart E, Appendix C and successfully complete applicable training courses approved by the Program pursuant to Rule .0603 of this Section. However, an applicant applying for roofing worker or roofing supervisor accreditation shall only be required to successfully complete the applicable training courses as described under Rule .0611 of this Section.

(c) In addition to the requirements in Paragraph (b) of this Rule, an applicant, other than for the worker or roofing worker category categories, shall meet the following:

(1) an applicant for initial accreditation shall have successfully completed an approved initial training course for the specific discipline within the 12 months immediately preceding application. If initial training was completed more than 12 months prior to application, the applicant shall have successfully completed an approved refresher training course for the specific discipline at least every 24 months from the date of

completion of initial training to the date of application;

(2) an inspector shall have:

(A) a high school diploma or equivalent; and

(B) at least three months of asbestos related experience as, or under the direct supervision of, an accredited inspector, or equivalent experience;

(3) a management planner shall have a high school diploma or equivalent and shall be an accredited inspector;

(4) a supervisor or roofing supervisor shall have:

(A) a high school diploma or equivalent; except that this requirement shall not apply to supervisors that were accredited on November 1, 1989; and

(B) at least three months of asbestos related experience as, or under the direct supervision of, an accredited supervisor, or equivalent experience;

(5) an abatement designer shall have:

(A) a high school diploma or equivalent; and

(B) at least three months of asbestos related experience as, or under the direct supervision of, an accredited abatement designer, or equivalent experience;

(6) an air monitor shall work only under an accredited supervising air monitor or meet the provisions of Part (c)(7)(C) of this Rule. However, this requirement shall not apply to the owner or operator of a building and his permanent employees when performing air monitoring in non-public areas. In addition, all air monitors shall meet the following requirements:

(A) Education and Work Experience:

(i) a high school diploma or equivalent;

(ii) three months of asbestos air monitoring experience as, or under the direct supervision of, an accredited air monitor or equivalent within 12 months prior to applying for accreditation;

(B) Training Requirements:

(i) complete a Program approved NIOSH 582 or Program approved NIOSH 582 equivalent and meet the initial and refresher training requirements of this Rule for supervisors; Program approved project monitor refresher course may be substituted for the supervisor refresher course; or

(ii) meet the initial and refresher training requirements of this Rule for a Program approved five-day project monitor course and a Program approved annual refresher course;

(iii) air monitors with a valid accreditation on October 1, 1994 shall have until October

1, 1995 to meet the training requirements for air monitors set forth in this Paragraph;

(7) a supervising air monitor shall meet the following requirements:

(A) Education and Work Experience:

(i) a high school diploma or equivalent;

(ii) three months of asbestos air monitoring experience as, or under the direct supervision of, an accredited air monitor or equivalent within 12 months prior to applying for accreditation;

(B) Training Requirements:

(i) complete a Program approved NIOSH 582 or Program approved NIOSH 582 equivalent and meet the initial and refresher training requirements of this Rule for supervisors; a Program approved project monitor refresher course may be substituted for the supervisor refresher course; or

(ii) meet the initial and refresher training requirements of this Rule for a Program approved five-day project monitor course and a Program approved annual refresher course;

(iii) supervising air monitors with a valid accreditation on October 1, 1994 shall have until October 1, 1995 to meet the training requirements for supervising air monitors set forth in this Paragraph;

(C) Professional Status:

(i) a supervising air monitor who was accredited as an air monitor on or after February 1, 1991, or an air monitor accredited prior to that date who has not continuously maintained accreditation, shall be a Certified Industrial Hygienist;

(ii) a supervising air monitor who was accredited as an air monitor prior to February 1, 1991, who has continuously maintained accreditation shall be a Certified Industrial Hygienist, Professional Engineer, or Registered Architect;

(D) Air monitors with a valid accreditation on January 1, 1995 supervising other accredited air monitors shall be deemed to be accredited supervising air monitors for the duration of their existing air monitor accreditation.

(d) To obtain accreditation, the applicant shall submit, or cause to be submitted, to the Program:

(1) a completed application on a form provided by the Program with the following information:

(A) full name and social security number of applicant;

(B) address, including city, state, zip code, and telephone number;

(C) date of birth, sex, height, and weight;

(D) discipline applied for;

(E) name, address, and telephone number of employer;

(F) training agency attended;

(G) name of training course completed;

(H) dates of course attended;

(2) two current 1 1/4 inch x 1 1/4 inch color photographs of the applicant with applicant's name and social security number printed on the back;

(3) confirmation of completion of an approved initial or refresher training course from the training agency; the confirmation shall be in the form of an original certificate of completion of the approved training course bearing the training agency's official seal, or an original letter from the training agency confirming completion of the course on training agency letterhead, or an original letter from the training agency listing names of persons who have successfully completed the training course, with the applicant's name included, on the training agency letterhead;

(4) when education is a requirement, a copy of the diploma or other written documentation;

(5) when experience is a requirement, work history documenting asbestos related experience, including employer name, address and phone number; positions held; and dates when the positions were held; and

(6) when applicants for initial air monitor accreditation are working under an accredited supervising air monitor pursuant to Subparagraph (c)(6) of this Rule, the accredited supervising air monitor shall submit an original, signed letter acknowledging responsibility for the applicant's air monitoring activities. The applicant shall ensure that a new letter is submitted to the Program any time the information in the letter currently on file is no longer accurate.

(e) All accreditations shall expire at the end of the 12th month following completion of required initial or refresher training. Work performed after the 12th month and prior to reaccreditation shall constitute a violation of this Rule. To be reaccredited, an applicant shall have successfully completed the required refresher training course within 24 months after the initial or refresher training course. An applicant for reaccreditation shall also submit information specified in Subparagraphs (d)(1)-(d)(6) of this Rule. If a person fails to obtain the required training within 12 calendar months after the expiration date of accreditation, that person may be accredited only by meeting the requirements of Paragraphs (b), (c), and (d) of this Rule.

(f) All accredited persons shall be assigned an accreditation number and issued a photo-identification card by the Program.

(g) In accordance with G.S. 130A-23, the Program may

revoke accreditation or reaccreditation for any violation of G.S. 130A, Article 19 or the rules in this Section, or upon finding that its issuance was based upon incorrect or inadequate information that materially affected the decision to issue accreditation or reaccreditation. The Program may also revoke accreditation or reaccreditation upon a finding that the accredited person has violated any requirement referenced in Rule .0605(e) of this Section. A person whose accreditation is revoked because of fraudulent misrepresentations or because of violations that create a significant public health hazard shall not reapply for accreditation before six months after the revocation and shall repeat the initial training course and other requirements as set out in Paragraphs (b), (c), and (d) of this Rule.

*Statutory Authority G.S. 130A-5(3); 130A-447; P.L. 99-519.*

#### **.0603 APPROVAL OF TRAINING COURSES**

(a) Pursuant to Rule .0602 of this Section, applicants for accreditation and reaccreditation are required to successfully complete training courses approved by the Program. Training courses:

- (1) Meeting the requirements of Required or recommended by 40 CFR Part 763, Subpart E, Appendix C and approved for a specific training provider by the Environmental Protection Agency or by a state with an Environmental Protection Agency-approved accreditation program, or by a state that has a written reciprocating agreement with the Program and meeting the requirements under Paragraph (g) of this Rule shall be deemed approved by the Program unless approval is suspended or revoked in accordance with Paragraph (I) of this Rule;
- (2) Required or recommended under 40 CFR Part 763, Subpart E, Appendix C and having no prior Program approval as specified in Subparagraph (a)(1) of this Rule shall meet the requirements of 40 CFR Part 763, Subpart E, Appendix C, I and III, and Paragraphs (b)-(f) of this Rule; or
- (3) Recommended under 40 CFR Part 763, Subpart E, Appendix C shall meet the requirements of Paragraphs (b)-(f) of this Rule; or
- (4) Other than those covered in Subparagraphs (1)-(3) (1) and (2) of this Paragraph required for North Carolina accreditation purposes shall meet the requirements of Paragraphs (e)-(f) of this Rule. Roofing worker or roofing supervisor courses taught prior to the effective date of these Rules and after August 10, 1994, that met the requirements of Rule .0611 of this Section will be considered acceptable for accreditation purposes.

(b) Refresher training courses shall review and discuss changes in the Federal and State regulations, developments in the state-of-the-art procedures, and key aspects of the initial courses outlined under 40 CFR Part 763, Subpart E,

Appendix C or Rule .0611 of this Section, as applicable.

(c) At the completion of the refresher training courses in all disciplines, the training provider shall administer a written closed book examination, approved by the Program. The requirements for the examination shall consist of a minimum of 25 multiple choice questions. For successful completion of the course the applicant shall pass the exam with a minimum score of 70 percent.

(d) Training courses shall be evaluated for approval and maintenance by the Program for course administration, course length, curriculum, training methods, instructors' qualifications, instructors' teaching effectiveness, technical accuracy of written materials and instruction, examination, and training certificate. The evaluation will be conducted using 40 CFR Part 763, Subpart E, Appendix C, Rule .0611 of this Section, or NIOSH 582 curriculum, as applicable, which are hereby incorporated by reference, including any subsequent amendments and editions. These documents are available for inspection at the Department of Environment, Health, and Natural Resources, ~~Asbestos Hazard Management Branch Health Hazards Control Branch~~, 441 North Harrington Street 2728 Capital Blvd., Raleigh, North Carolina 27603 27604. Copies of 40 CFR Part 763, Subpart E, Appendix C may be obtained by writing to the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7954, at a cost of twenty-six dollars (\$26.00). Copies of the NIOSH 582 curriculum may be obtained by writing the Department of Environment, Health, and Natural Resources, ~~Asbestos Hazard Management Branch Health Hazards Control Branch~~, P.O. Box 27687, Raleigh, NC 27611, at a cost of thirty-five dollars (\$35.00).

(e) Training course providers shall submit the following for evaluation and approval by the Program:

- (1) a completed application on a form provided by the Program, along with supporting documentation. The form and supporting documentation shall include the following:
  - (A) name, address, and telephone number of the training provider, and name and signature of the contact person;
  - (B) course title, location and the language in which the course is to be taught;
  - (C) a student manual and an instructor manual for each course and a content checklist that identifies and locates sections of the manual where required topics are covered;
  - (D) course agenda;
  - (E) a copy or description of all audio/visual materials used;
  - (F) a description of each hands-on training activity;
  - (G) a copy of a sample exam;
  - (H) a sample certificate with the following information: and
    - (i) Name and social security number of student;

- (ii) Training course title specifying initial or refresher;
- (iii) Inclusive dates of course and applicable examination;
- (iv) Statement that the student completed the course and passed any examination required;
- (v) Unique certificate number as required;
- (vi) For courses covered under 40 CFR Part 763, Subpart E, Appendix C, certificate expiration date that is one year after the date the course was completed and the applicable examination passed;
- (vii) Printed name and signature of the training course administrator and printed name of the principal instructor;
- (viii) Name, address, and phone number of the training provider;
- (ix) Training course location; and
- (x) For courses required under 40 CFR Part 763, Subpart E, Appendix C, a statement that the person receiving the certificate has completed the requisite training for asbestos accreditation under Title II of the Toxic Substances Control Act; and
- (xi) For training courses taught in languages other than English, the certificate shall indicate the language of the course.

- (1) a list of training currently being provided.
- (2) A list of instructors and their qualifications in accordance with Rule .0608 of this Section.

(f) An application for course approval shall be processed as follows:

- (1) The Program shall review the application and supporting documentation submitted pursuant to Paragraph (e) of this Rule and advise the applicant of any deficiencies;
- (2) If the submitted documentation meets all applicable requirements of this Rule, the Program shall notify the applicant of this and also advise the applicant that it may contact the Program to schedule an on-site audit; approval of submitted documentation does not constitute course approval;
- (3) If the Program determines, as a result of the audit, that the training course meets all applicable requirements of this Rule, it shall issue course approval. If the course does not meet these requirements, the Program shall notify the applicant of the deficiencies and advise that applicant that it may request one additional audit, which shall be held no more than six months from the date of the first audit; a request for audit after that time shall require a new application and fee;
- (4) If the Program determines, as the result of the second audit, that the training course meets all

applicable requirements of this Rule, it shall issue course approval. If the course does not meet all these requirements, the Program shall notify the applicant of the deficiencies and advise the applicant that it may not reapply for course approval for the audited course for a period of six months from the date of the last audit;

(5) The Program will not accept certificates for a training course that is not approved or deemed approved pursuant to this Rule.

Contingent approval shall be granted by the Program if the application and supporting documentation meet the criteria of Rule .0603(d) and (e) of this Section, except for technical accuracy of instruction, instructor effectiveness and course administration. Full approval shall be granted for a one year period by the Program to a course with contingent approval after successful completion of an on-site audit of the course conducted in North Carolina. The on-site audit shall include, but not be limited to, an evaluation of the following:

- (1) instructor effectiveness;
- (2) technical accuracy;
- (3) course administration; and
- (4) course content.

(g) Training course providers shall perform the following in order to maintain approval:

- (1) Issue a certificate of training meeting the requirements of Part (e)(1)(H) of this Rule to any student who completes the required training and passes the applicable examination.
- (2) Submit to the Program written notice of intention to conduct a training course for North Carolina asbestos accreditation purposes if the course is to be taught in North Carolina or if requested by the Program. Notices for training courses, except asbestos worker, shall be postmarked 10 working days before the training course begins. Notices for asbestos worker training courses shall be postmarked five working days before the training course begins. If the training course is canceled, the training course provider shall notify the Program at least 24 hours before the one working day prior to the scheduled start date. Notification of intent to conduct a training course shall be made using a form provided by the Program and shall include the following:
  - (A) Training provider name, address, phone number and contact person;
  - (B) Training course title;
  - (C) Inclusive dates of course and applicable exam;
  - (D) Start and completion times;
  - (E) Identify whether the course is public offering, contract training, or for the training provider's employees;
  - (F) Location and directions to course facility; and

(G) Language in which the course is taught; and

(H) Principal instructor.

(3) Notify the Program, in writing, at least 10 working days prior to the scheduled course start date, of any changes to course length, curriculum, training methods, training manual or materials, instructors, examination, training certificate, training course administrator or contact person. The changes must be approved by the Program in order for the course to be acceptable for accreditation purposes.

(4) Submit to the Program information and documentation for any course approved under Sub-paragraph (a)(1)-(3) of this Rule if requested by the Program.

(5) Ensure that all instructors meet the requirements of Rule .0608 of this Section.

(6) Ensure that all training courses covered under this Rule meet the following requirements:

- (A) All training courses shall have a maximum of 40 students;
- (B) A day of training shall include at least six and one-half hours of direct instruction, including classroom, hands-on training or field trips;
- (C) Regular employment and instruction time shall not exceed 12 hours in a 24 hour period;
- (D) A training course shall be completed within a two-week period;
- (E) All instructors and students shall be fluent in the language in which the course is being taught;
- (F) An interpreter shall not be used;
- (G) Upgrading worker accreditation to that of supervisor by completing only one day of initial training is not permitted. Separate initial training as a supervisor is required;
- (H) A single instructor is allowed only for a worker course. Other initial disciplines shall have a minimum of two instructors;
- (I) Instructor ratio for hands-on shall be no more than 10 students per instructor;
- (J) All course materials shall be in the language in which the course is being taught;
- (K) Each training course required by 40 CFR Part 763, Subpart E, Appendix C, shall be discipline specific; and
- (L) Students shall be allowed to take an examination no more than twice for each course. After two failures, the student shall retake the full course before being allowed to retest; and
- (M) Training providers shall provide examination security to prevent student access to the examination materials before and after the exam. Training providers shall take measures to preclude cheating during the exam, such as

(7) providing space between students, prohibiting talking, and monitoring students throughout the exam.

(8) Verify, by photo identification, the identity of any student requesting training.

(9) For each course approved or deemed approved by the Program under Paragraph (a) of this Rule and taught in North Carolina, the training provider shall submit a completed renewal application on a form provided by the Program. Effective January 1, 1995, a renewal application shall be submitted prior to the next course offering and annually thereafter. If an annual training course renewal lapses, the provider shall submit a renewal application prior to offering the course again in North Carolina.

(10) Training courses required or recommended under 40 CFR Part 763, Subpart E, Appendix C, shall meet the requirements therein.

(h) All work practice and worker protection demonstrations and hands-on exercises, including but not limited to respirator fit testing, presented in all training courses covered under this Rule shall be conducted following the procedures provided in 29 CFR 1926.1101 as incorporated by reference in Rule .0601(c) of this Section.

(i) In accordance with G.S. 130A-23, the Program may suspend or revoke approval for a training course for violation of this Rule and shall suspend or revoke approval upon suspension or revocation of approval by the Environmental Protection Agency or by any state with an Environmental Protection Agency-approved accreditation program. A training provider whose approval has been revoked by the Program shall not reapply for approval for one year. The Program shall also revoke course approval for all courses taught by a training provider upon a finding that the training course provider has issued one or more certificates to an individual who did not actually attend the course, either initial or refresher, and pass the examination. When course approval is revoked for improper issuance of certificates, the training course provider may not reapply for course approval for a period of three years from the date of revocation.

Statutory Authority G.S. 130A-5(3); 130A-447; P.L. 99-519.

#### .0605 ASBESTOS CONTAINING MATERIALS REMOVAL PERMITS

(a) No person shall remove more than 35 cubic feet (1

cubic meter), 160 square feet (15 square meters) or 260 linear feet (80 linear meters) of regulated asbestos containing material, without a permit issued by the Program. This permitting requirement is applicable to:

- (1) individual removals that exceed the threshold amounts addressed in this Paragraph;
- (2) nonscheduled asbestos removals conducted at an installation that exceed the threshold amounts addressed in this Paragraph in a calendar year of January 1 through December 31.

Other asbestos abatement activities are exempt from the permit requirements of G.S. 130A-449.

(b) All applications shall be made on a form provided or approved by the Program. The application submittal shall include at least all of the information specified under the notification requirements of 40 CFR Part 61.145(b), Subpart M as adopted in Rule .0609 of this Section. Applications for asbestos containing material removal permits shall adhere to the following schedule.

- (1) Applications for individual asbestos removals shall be postmarked or received by the Program at least 10 working days prior to the scheduled removal start date. For emergency renovation operations involving asbestos removal, the 10 working days notice shall be waived. An application for a permit for the emergency renovation operation shall be postmarked or received by the Program as early as possible before, but not later than, the following working day. Permit applications for emergency renovation operations shall be accompanied by a letter from the owner or his representative explaining the cause of the emergency;
- (2) Applications for nonscheduled asbestos removals shall be postmarked or received by the Program at least 10 working days before the start of the calendar year and shall expire on or before the last day of the same calendar year. Reports of the amount of regulated asbestos containing material removed shall be made at least quarterly to the Program.

(c) Application for revision to an issued asbestos removal permit shall be made by the applicant in writing on a form provided by the Program and shall be received by the Program in accordance with the following:

- (1) Revision to a start date for a project that will begin after the start date stated in the approved permit shall be received on or before the previously stated start date or previously revised start date;
- (2) Revision to a start date for a project that will begin before the start date stated in the approved permit shall be received at least 10 working days before the new start date;
- (3) Revision to a completion date that will be extended beyond the completion date stated in the approved permit shall be received by the original

(4) or previously revised completion date; Revision to a completion date that will be earlier than the completion date stated in the approved permit shall be received by the new completion date; and

(5) Revisions to permits other than start or completion dates shall be submitted to the Program prior to initiating the activity which the revision addresses.

(d) The following shall be maintained on site during removal activities and be immediately available for review by the Program:

- (1) a copy of the removal permit issued by the Program and all revisions with the Program's confirmation of receipt;
- (2) a copy of applicable asbestos abatement design and project monitoring plan; and
- (3) photo identification cards issued by the Program for all accredited personnel performing asbestos management activities.

(e) All permitted removal activities shall be conducted in accordance with 40 CFR Parts 61 and 763, Subpart E, where applicable. ~~Notwithstanding permit suspension or revocation if the removal activities are in violation of Department of Labor rules found at Chapter 7, Title 13 of the North Carolina Administrative Code, Department of Transportation rules found at Title 19A, of the North Carolina Administrative Code, or Solid Waste Management rules found at Chapter 13, Title 15A of the North Carolina Administrative Code, as determined by the agencies administering those Rules, respectively. Notwithstanding permit suspension or revocation for violation of the rules of this Section, an asbestos removal permit shall also be subject to suspension or revocation if the removal activities are in violation of the following provisions with regard to asbestos abatement, as determined by the agencies which administer these rules:~~

- (1) Department of Labor rules found at Chapter 7, Title 13 of the North Carolina Administrative Code;
- (2) Department of Transportation rules found at Title 19A, of the North Carolina Administrative Code; or
- (3) Solid Waste Management rules found at Chapter 13, Title 15A of the North Carolina Administrative Code.

(f) All permitted removals shall be conducted under the direct supervision of an accredited supervisor. supervisor, except that permitted removals of roofing products may be conducted under the direct supervision of an accredited roofing supervisor. The supervisor or roofing supervisor, as applicable, shall be on-site at all times when removal activities are being performed.

(g) An asbestos abatement design shall be prepared by an accredited abatement designer for each individually permitted removal of more than 3000 square feet (281 square meters), 1500 linear feet (462 meters) or 656 cubic feet (18

cubic meters), of regulated asbestos containing materials conducted in public areas.

(h) In accordance with G.S. 130A-23, the Program may suspend or revoke the permit for any violation of G.S. 130A, Article 19 or any of the rules of this Section. The Program may also revoke the permit upon a finding that its issuance was based upon incorrect or inadequate information that materially affected the decision to issue the permit.

(i) A waste shipment record shall be submitted to the Program for all asbestos removal projects permitted under this Rule. This submittal shall be made on a form provided or approved by the Program. This form shall include at least all of the information specified under the waste shipment record requirements of 40 CFR Part 61, Subpart M, Section 61.150(d) as adopted in Rule .0609 of this Section.

Statutory Authority G.S. 130A-5(3); 130A-449; P.L. 99-519.

#### .0606 FEES

(a) The fee required by G.S. 130A-450 shall be submitted with an application for the asbestos containing material removal permit. The fees shall be as follows:

- (1) Fees for the removal of floor tiles, cementitious asbestos containing wallboard or panels and asbestos containing roofing material shall be one percent of the contract price or ten cents (\$0.10) per square foot, whichever is greater;
- (2) Fees for the removal of ceiling tiles shall be one percent of the contract price or ten cents (\$0.10) per square foot, whichever is greater;
- (3) Fees for the removal of surfacing material, thermal system insulation and other asbestos containing materials shall be one percent of the contract price or twenty cents (\$0.20) per square or linear foot, whichever is greater;
- (4) Fees for demolition shall be a maximum of three hundred dollars (\$300.00). Demolition, for the purposes of this Rule only, means the act of razing a building or structure, or portion thereof, to the ground. Removal of regulated asbestos containing material from any undemolished portion of a building or structure shall be permitted as an individual asbestos removal; and
- (5) An owner of any single family dwelling in which the owner resides or will reside after the asbestos removal is complete is exempt from permit fees.

A permit shall not be issued until the required fee is paid.

(b) The fee required by G.S. 130A-448(a) shall be submitted with an application for accreditation or reaccreditation. The amount of the fee shall be one hundred dollars (\$100.00) for each category, except that the fee for persons applying for accreditation or reaccreditation as workers or roofing workers shall be twenty-five dollars (\$25.00). However, if a person applies for accreditation or reaccreditation in more than one category per calendar year, the

amount of the fee shall be one hundred dollars (\$100.00) for accreditation or reaccreditation in the first category and seventy-five (\$75.00) for accreditation or reaccreditation in each remaining category, except for workers. A person shall not be accredited or reaccredited until the required fee is paid.

(c) The fees required by G.S. 130A-448(b) shall be submitted with the application for each initial course approval and each renewal course approval. The amount of the fee shall be one thousand five hundred dollars (\$1,500.00) for each initial course approval and two hundred dollars (\$200.00) for each renewal course approval.

Statutory Authority G.S. 130A-5(3); 130A-448(a); 130A-448(b); 130A-450; P.L. 99-519.

#### .0607 ASBESTOS EXPOSURE STANDARD FOR PUBLIC AREAS

(a) The maximum allowable ambient asbestos level in the air for public areas shall be:

- (1) 0.01 fibers per cubic centimeter as analyzed by phase contrast microscopy, or
- (2) arithmetic mean of less than or equal to 70 structures per millimeter square as analyzed by transmission electron microscopy, or
- (3) a Z-Test result that is less than or equal to 1.65 as analyzed by transmission electron microscopy.

(b) For individually permitted asbestos removals, ambient air sampling shall be conducted in public areas adjacent to the work area. Initial sampling shall be conducted on the day that regulated asbestos containing material removal begins. The sampling shall continue on a daily basis unless, or until, the supervising air monitor specifies differently. Potential public asbestos exposure shall be considered when determining the frequency and location of the sampling.

(c) Clearance air sampling shall be conducted in accordance with Paragraphs (d) and (e) of this Rule for all permitted asbestos removal projects conducted in public areas. Permitted asbestos removals projects involving less than or equal to 10 square feet (1 square meter) or 25 linear feet (8 linear meters) of regulated asbestos containing materials are exempt from the clearance air sampling requirements. Clearance air samples shall be analyzed by:

- (1) transmission electron microscopy and comply with the levels specified under Subparagraph (a)(2) or (a)(3) of this Rule for each individually permitted removal of more than 3000 square feet (281 square meters), 1500 linear feet (462 meters), or 656 cubic feet (18 cubic meters) of regulated asbestos containing material; or
- (2) transmission electron microscopy or phase contrast microscopy and comply with the levels specified in Paragraph (a) for all other permitted asbestos removals.

Clearance air sampling is not required for buildings that are demolished within six months from the completion date of

the asbestos removal if the building will not be reoccupied by the public or unprotected workers at any point after the asbestos removal. Demolition, for the purpose of this Rule, means as defined in Rule .0606(a)(4) of this Section.

(d) Phase contrast microscopy and transmission electron microscopy sampling and analysis methods shall be conducted in accordance with 40 CFR Part 763, Subpart E.

(e) Sample analysis for phase contrast microscopy or transmission electron microscopy samples shall be performed by a laboratory meeting the requirements of P.L. 99-519 and 40 CFR 763 and accompanying appendices. Laboratories performing phase contrast microscopy analysis pursuant to this Rule shall have a rating of proficient by the American Industrial Hygiene Association's Proficiency Analytical Testing Program. ~~Persons performing phase contrast microscopy analysis shall have successfully completed a NIOSH 582 or a NIOSH 582 equivalent training course. Persons Individuals~~ performing phase contrast microscopy analysis at the asbestos removal location shall be rated proficient in the American Industrial Hygiene Association's Asbestos Analysts Registry Program. If all microscopists in a particular laboratory performing phase contrast microscopy analysis are rated as proficient by the Asbestos Analysts Registry Program, enrollment in the Proficiency Analytical Testing Program is not required.

(f) A final visual inspection shall be conducted by an accredited air monitor or an accredited supervising air monitor for all permitted asbestos removals conducted in public areas. This visual inspection shall be conducted prior to clearance air sampling. The final visual inspection shall assure that all asbestos containing residue, dust, and debris and asbestos contaminated equipment has been removed.

(g) Any person performing ambient or clearance air sampling or visual inspection during an asbestos removal as specified under Paragraphs (b), (c), and (f) of this Rule shall be retained by the building owner. Neither the accredited supervising air monitor nor accredited air monitor shall be employed by the contractor hired to conduct the asbestos removal except that:

- (1) this restriction in no way applies to personal samples taken to evaluate worker exposure as required by Occupational Safety and Health Act; and
- (2) this restriction shall not apply when the contractor and air monitor have disclosed their association to the building owner and the building owner approves this association in writing.

(h) For air sampling and visual inspections conducted under Paragraphs (b), (c), and (f) of this Rule, the supervising air monitor shall:

- (1) Prepare, prior to the removal start date, an abatement project monitoring plan which takes into consideration at least the abatement project scope of work, building use, occupant locations and their potential for exposure to airborne asbestos fibers, type of asbestos containing material, and the asbestos abatement design,

including work practices and engineering controls. The plan shall include air sampling procedures, air sample locations and air sampling frequency. This sampling plan may be amended by the supervising air monitor as needed. This requirement shall apply to each individually permitted removal of more than 3000 square feet (281 square meters), 1500 linear feet (462 meters), or 656 cubic feet (18 cubic meters) of regulated asbestos containing materials;

- (2) Ensure that ambient air sampling results shall be available on-site:
  - (A) within 24 hours of sample collection and analysis by phase contrast microscopy;
  - (B) within 48 hours of sample collection and analysis by transmission electron microscopy;
- (3) Personally inspect any individually permitted asbestos removal project:
  - (A) that exceeds 10 working days in length, but does not exceed 30 working days, at least once; or
  - (B) that exceeds 30 working days in length, at least once in the first 30 working days and at least once every 30 working days thereafter;
- (4) Prepare a written, signed and dated report documenting all site visits made to the removal, final visual inspection, and all ambient and clearance air sampling conducted. This report shall be supplied by the supervising air monitor to the building owner. The building owner shall supply a copy of the report to the Program upon request.

*Statutory Authority G.S. 130A-5(3); 130A-446; P.L. 99-519.*

#### **.0608 TRAINING COURSE INSTRUCTOR QUALIFICATIONS**

(a) Any person seeking approval as an instructor for courses covered under 40 CFR Part 763, Subpart E, Appendix C and Rule .0603(a)(3) and .0611 of this Section shall meet the applicable requirements listed in this Rule.

(b) All training course providers shall submit, or cause to be submitted, to the Program the following:

- (1) a completed application on a form provided by the Program with the following information:
  - (A) name, address, and telephone number of the applicant;
  - (B) name, address and telephone number of the training provider that is employing the applicant;
- (2) when training course completion is a requirement, confirmation of completion of an approved training course; the confirmation shall be in the form of an original certificate of completion of the approved training course or the following information: the course title, dates of

instruction, names of instructors, name, address and telephone number of the training provider; when education is a requirement, a copy of the diploma or other written documentation;

(3) when work experience is a requirement, documentation of relevant work history, including employer name, address and telephone number, positions held, dates when positions were held, and copies of any licenses, registrations, certifications or accreditations that are relevant to the subject matter to be taught; and

(4) when experience as an instructor is a requirement, documentation of relevant instructional experience including name of training courses taught, topics taught for each course, inclusive dates of each training course, and name, address and telephone number of each training organization for which experience is claimed.

(c) Work practice topics for each shall include:

(1) for the worker and roofing worker courses: state-of-the-art work practices;

(2) for the supervisor and roofing supervisor courses: state-of-the-art work practices, and techniques for asbestos abatement activities;

(3) for the inspector course: pre-inspection planning and review of previous inspection records, inspecting for friable and nonfriable asbestos containing materials and assessing the condition of friable asbestos containing materials, bulk sampling/documentation of asbestos in schools, recordkeeping and writing inspection reports;

(4) for the management planner course: evaluation/interpretation of survey results, hazard assessment, developing an operations and maintenance plan, recordkeeping for the management planner, and assembling and submitting the management plan;

(5) for the abatement designer course: safety system design specifications, designing abatement solutions, budgeting/cost estimation, writing abatement specifications, preparing abatement drawings and occupied buildings; and

(6) for the project monitor course: asbestos abatement contracts, specifications and drawings, response actions and abatement practices, air monitoring strategies, conducting visual inspections, and recordkeeping and report writing.

(d) Instructors for work practice topics, hands-on exercises, workshops, or field trips where required for courses covered under 40 CFR Part 763, Subpart E, Appendix C shall meet the following requirements as applicable:

(1) For the worker initial and refresher and the supervisor initial and refresher courses:

(A) the applicant shall have successfully completed the initial and subsequent refresher training course requirements for supervisor; and

(B) the applicant shall meet at least one of the

following education and asbestos work experience combinations:

(i) If the applicant does not possess either a high school diploma or equivalent, the applicant shall:

(I) have at least 1440 hours experience in a worker or supervisory capacity in a contained work area; and

(II) have at least 360 hours as an instructor in an Environmental Protection Agency-approved or Environmental Protection Agency state approved worker course.

(ii) If the applicant possesses either a high school diploma or equivalent, the applicant shall:

(I) have at least 960 hours experience in a worker, supervisory, or consulting capacity in a contained work area; or

(II) have at least 240 hours as an instructor in an Environmental Protection Agency-approved or Environmental Protection Agency state approved asbestos worker or supervisor course or other occupational safety and health or environmental courses required to meet federal and state regulations.

(iii) If the applicant possesses at least an associate degree from a regionally accredited college or university, the applicant shall:

(I) have at least 480 hours experience in a worker, supervisory, or consulting capacity in a contained area; or

(II) have at least 120 hours as an instructor in an Environmental Protection Agency-approved or Environmental Protection Agency state approved asbestos worker or supervisor course or other occupational safety and health or environmental courses required to meet federal and state regulations.

(2) For the inspector initial and refresher courses:

(A) the applicant shall have successfully completed the initial and subsequent refresher training course requirements for inspector; and

(B) the applicant shall meet at least one of the following education and asbestos work experience combinations:

(i) If the applicant possesses either a high school diploma or equivalent, the applicant shall:

(I) have documented experience, including asbestos inspections in at least 1,000,000 square feet of building space in the past three years; or

(II) have at least 60 hours as an instructor in an Environmental Protection

Agency-approved or Environmental Protection Agency state approved inspector course or other occupational safety and health or environmental courses required to meet federal and state regulations.

(ii) If the applicant possesses at least an associate degree from a regionally accredited college or university, the applicant shall:

(I) have documented experience, including asbestos inspections in at least 500,000 square feet of building space in the past three years; or

(II) have at least 40 hours as an instructor in an Environmental Protection Agency-approved or Environmental Protection Agency state approved inspector course or other occupational safety and health and environmental courses required to meet federal and state regulations.

(3) For the management planner initial and refresher courses:

(A) the applicant shall have successfully completed the initial and subsequent refresher training course requirements for management planner; and

(B) the applicant shall meet at least one of the following education and asbestos work experience combinations:

(i) If the applicant possesses either a high school diploma or equivalent, the applicant shall:

(I) have documented management planning experience showing at least 25 management plans or reinspection reports written in the past three years, or documented experience as the management consultant for at least 25 asbestos projects in the past three years, or a combination of management plans and projects managed; or

(II) have at least 48 hours as an instructor in an Environmental Protection Agency-approved or Environmental Protection Agency state approved management planner course or other occupational safety and health or environmental courses required to meet federal and state regulations.

(ii) If the applicant possesses at least an associate degree from a regionally accredited college or university, the applicant shall:

(I) have documented management planning experience showing at least 12 management plans or reinspection reports written in the past three years, or docu-

mented experience as the management consultant for at least 12 asbestos projects in the past three years, or a combination of management plans and projects managed; or

(II) have at least 32 hours as an instructor in an Environmental Protection Agency-approved or Environmental Protection Agency state approved management planner course or other occupational safety and health or environmental courses required to meet federal and state regulations.

(4) For the project designer initial and refresher courses:

(A) the applicant shall have successfully completed the initial and subsequent refresher training course requirements for abatement project designer; and

(B) the applicant shall meet at least one of the following education and asbestos work experience combinations:

(i) If the applicant possesses either a high school diploma or equivalent, the applicant shall:

(I) have documented asbestos abatement project design experience including the design of at least 12 asbestos projects in the past three years; or

(II) have at least 30 hours as an instructor in an Environmental Protection Agency-approved or Environmental Protection Agency state approved abatement project designer course or other occupational safety and health and environmental courses required to meet federal and state regulations.

(ii) If the applicant possesses at least an associate degree from a regionally accredited college or university, the applicant shall:

(I) have documented asbestos abatement project design experience, including the design of at least six asbestos projects in the past three years; or

(II) have at least 20 hours as an instructor in an Environmental Protection Agency-approved or Environmental Protection Agency state approved abatement project designer course or other occupational safety and health and environmental courses required to meet federal and state regulations.

(5) For the project monitor initial and refresher courses:

(A) the applicant shall meet the qualifications for project designer instructor under Subparagraph (d)(4) of this Rule or the qualifications for

supervisor instructor under Subparagraph (d)(1) of this Rule to teach the work practice topics of asbestos abatement contracts, specifications and drawings or response action and abatement practices;

(B) the applicant for work practice topics of air monitoring strategies, conducting visual inspections, and recordkeeping and report writing shall:

- (i) possess either a high school diploma or equivalent;
- (ii) successfully complete a NIOSH 582 course or Program approved equivalent, or a Program approved project monitor course; and
- (iii) have documented asbestos air monitoring experience on at least six asbestos removals.

(6) All instructors approved under Paragraph (d) of this Rule shall take a refresher training in at least one discipline from a training provider other than their employer every other year.

(e) Instructors who will teach one or more segments of a training courses course covered under 40 CFR Part 763, Subpart E, Appendix C, Rule .0603(a) or Rule .0611 of this Section other other than work practice topics, hands-on exercises, workshops, or field trips trips shall meet the following requirements:

- (1) be actively working in the field of expertise in which training is conducted; and
- (2) have a minimum of a high school diploma or equivalent.

(f) Instructors for a Program approved NIOSH 582 or Program approved equivalent shall meet the following requirements:

- (1) have a high school diploma or equivalent;
- (2) attend the National Institute for Occupational Safety and Health's NIOSH 582 training course; and
- (3) for teaching the NIOSH 7400 Method, have at least three months work experience as a microscopist performing analysis using the NIOSH 7400 Method.

(g) Instructors who teach work practice or hands-on topics in Program approved roofing worker or roofing supervisor initial or refresher courses shall meet the following requirements:

- (1) have a high school diploma or equivalent;
- (2) successfully complete either an initial asbestos supervisor or initial asbestos roofing supervisor course, and subsequent annual refreshers courses;
- (3) successfully complete an initial asbestos inspector course; and
- (4) have at least three months' experience as a roofing supervisor or foreman.

Statutory Authority G.S. 130A-447; P.L. 99-519.

**.0609 ASBESTOS NESHAP FOR RENOVATIONS AND DEMOLITIONS**

(a) Each owner or operator of a renovation or demolition activity, as defined in 40 CFR 61.141, shall comply with all applicable requirements of the Asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP) for renovations and demolitions as found in 40 CFR Part 61, Subparts A and M. 40 CFR Part 61, Subparts A and M are hereby incorporated by reference, including any subsequent amendments and editions. This document is available for inspection at the Department of Environment, Health, and Natural Resources, ~~Asbestos Hazard Management Branch~~ ~~Health Hazards Control Branch~~, 441 North Harrington Street 2728 Capital Blvd., Raleigh, North Carolina. Copies may be obtained free of charge by writing the ~~Asbestos Hazard Management Branch~~ ~~Health Hazards Control Branch~~, P.O. Box 27687, Raleigh, North Carolina 27611.

(b) All reports, applications, submittals, and other communications required to be submitted under Paragraph (a) of this Rule shall be submitted to the Director, Division of Epidemiology, rather than to the Environmental Protection Agency, except that such asbestos NESHAP documents pertaining to renovations and demolitions within local air pollution program jurisdictions shall be submitted to the local program.

Statutory Authority G.S. 130A-451.

**.0611 REQUIREMENTS FOR ASBESTOS ROOFING TRAINING COURSES**

(a) Pursuant to Rule .0602 of this Section, applicants for accreditation and reaccreditation as a roofing worker or roofing supervisor are required to successfully complete a training course approved by the Program under this Rule. Initial and refresher training courses for roofing workers and roofing supervisors shall meet requirements of this Rule and Rule .0603 of this Section.

(b) Initial training courses for roofing workers shall be at least one day in length and cover the following topics:

- (1) Physical characteristics of asbestos, including the identification of asbestos, the aerodynamic characteristics, and the typical uses of asbestos in roofing materials;
- (2) Health effects related to asbestos exposure, including the nature of asbestos related diseases, the routes of exposures, the dose-response relationship, the lack of a safe exposure level, the latency period, cigarette smoking and asbestos exposure, medical surveillance programs, and information on smoking cessation programs;
- (3) State-of-the art work practices, including proper work techniques to minimize fiber release, removal procedures for cement roofing products versus built-up roofing products, discussion of prohibited work practices, wetting, hand tools,

(4) power tools, HEPA vacuumed tools, waste disposal procedures, and controlling access to work areas;

(5) Personal protection equipment, including the classes and characteristics of respirator types, limitations, proper selection, inspection, donning, use and storage procedures for respirators, fit testing, components of a proper respiratory protection program, selection and use and storage of non-disposable clothing, hard hats, safety glasses, and non-slip shoes;

(6) Personal hygiene, including entry and exit procedure for the work area, avoidance of eating, smoking, and chewing in the work area, and potential exposures, such as family exposures;

(7) Safety practices and hazard prevention during removal of roofing materials and emergency procedures, including hazards posed by wet working conditions, electrical hazards, slips, trips, heat/cold stress, falls, and scaffold and ladder hazards; and

(7) Review of state, federal, and local rules and regulations, including an overview of the asbestos regulations under the National Emission Standards for Hazardous Air Pollutants (40 CFR Part 61, Subpart M), Occupational Safety and Health Act (29 CFR 1926.1101), these Rules, and other pertinent rules and regulations.

(c) Initial training courses for roofing supervisors shall be at least two days in length and cover the topics under Paragraph (b) of this Rule. The following additional topics shall be covered in roofing supervisor courses:

(1) Discussion of the competent person duties required by the Occupational Safety and Health Act, Asbestos Construction Standard, 29 CFR 1926.1101(o), as adopted by 13 NCAC 7F .0201 and amendment or recodification as adopted by the North Carolina Department of Labor;

(2) Pre-work activities and considerations, including the determination of asbestos containing roofing products, bulk sampling procedures, analytical methods, inspection reports, and air monitoring procedures;

(3) Assessment of the work area, including isolation of the work area, considerations if the work area is adjacent to an occupied area, and items requiring special protection;

(4) Site considerations and preparations, designating the regulated areas, setting up the barricade, and warning signs; and

(5) Supervisory techniques, including worker training, housekeeping, recordkeeping, and documentation requirements.

(d) The state-of-the-art work practice topics shall include a segment of hands-on activities, which allows the students an opportunity to use and handle equipment found on asbestos roofing projects. The hands-on activities shall be a minimum of two hours for the roofing worker course and four hours for roofing supervisor course.

(e) The refresher training course for roofing workers shall be at least one-half day and the roofing supervisor course shall be at least one day in length. These courses shall review and discuss changes in the Federal and State regulations, developments in the state-of-the-art work procedures, and key aspects of the initial courses as provided in Paragraphs (b) and (c) this Rule.

(f) At the completion of the initial roofing worker and roofing supervisor course the training provider shall administer a written closed book examination, approved by the Program. The examination shall be in multiple choice format, with a minimum of 50 questions for the roofing supervisor course and 25 questions for the roofing worker course. For successful completion of the course, the student shall pass the examination with a minimum score of 70 percent. The refresher training course examination for these disciplines shall meet the requirements of Rule .0603(c) of this Section.

Statutory Authority G.S. 130A-447.

## CHAPTER 25 - LOCAL STANDARDS

### SECTION .0200 - STANDARDS FOR LOCAL HEALTH DEPARTMENTS

#### .0213 FOOD, LODGING/INST SANITATION/PUBLIC SWIMMING POOLS/SPAS

(a) A local health department shall provide food, lodging, and institutional sanitation and public swimming pools and spas services within the jurisdiction of the local health department. A local health department shall establish, implement, and maintain written policies which shall include:

(1) The frequency of inspections of food, lodging, and institutional facilities and public swimming pools and spas with the following being the minimum:

Type of Establishment	Frequency
Bed and breakfast homes	1/year
Bed and breakfast inns	1/6 months

Catered Elderly Nutrition Sites	1/year
Child day-care facilities	2/year
<u>Commissary for Pushcart or Mobile Food Unit</u>	<u>1/quarter</u>
Institutions	<u>2/year 6 months</u>
<u>Limited Food Service Establishments</u>	<u>1/quarter</u>
Local confinement facilities	1/year
Lodging	1/year
Meat markets	<u>4/year 1/quarter</u>
<del>Meat markets which are closed for a period of 60 days or more</del>	<del>1/3 months of operation (or part thereof)</del>
Migrant housing water and sewage evaluation	1/year
Mobile food units	<u>4/year 1/quarter</u>
Private boarding schools and colleges	1/year
Public swimming pools and spas which operate only between April 1 and October 31 each year	1/operational season
Public swimming pools and spas which operate at times other than between April 1 and October 31 each year	2/year
Pushcarts	<u>4/year 1/quarter</u>
Residential care facilities	1/year
Restaurants	1/quarter
Schools	1/year
Summer camps	1/year

For the purpose of restaurant inspections, a food sampling inspection shall fulfill the requirement of an inspection provided a minimum of three distinct samples are taken from the restaurant. A maximum of one food sampling inspection per restaurant, per year, may be used to meet the quarterly inspection requirement for restaurants.

- (2) Provisions for investigating complaints and suspected outbreaks of illness associated with food, lodging, and institutional facilities, and public swimming pools. Corrective actions shall be taken in cases of valid complaints and confirmed outbreaks of illness.
- (3) Provisions for keeping records of activities described in Subparagraphs (a)(1) and (2) of this Rule.

(b) A local health department shall establish, implement, and maintain written policies for the provision of sanitation education for food service personnel and orientation and in-service training for sanitarians. The policies shall include the following minimum requirements for sanitarians providing food, lodging, and institutional sanitation services:

- (1) Initial field training for newly employed sanitarians;
- (2) CDC Homestudy Course 3010-G or its equivalent as approved by the Division of Environmental Health;
- (3) North Carolina State University Food Protection Short Course or its equivalent as approved by the Division of Environmental Health; and
- (4) Compliance with the Board of Sanitarian Examiners' requirements.

Statutory Authority G.S. 130A-9.

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**TITLE 16 - DEPARTMENT OF PUBLIC EDUCATION**

**N**otice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Education intends to amend rules cited as 16 NCAC 6D .0301 - .0302; 6E .0101 - .0102, .0104, .0202; 6G .0303; 6H .0001, .0006 - .0008; and repeal rules cited as 16 NCAC 6A .0001 - .0002; 6B .0001 - .0002, .0004 - .0006; 6D .0102, .0104; 6G .0301 - .0302.

**Proposed Effective Date: April 1, 1996.**

**A Public Hearing will be conducted on December 5, 1995 at the Education Building, Room 224, 301 N. Wilmington Street, Raleigh, NC 27601-2825 at the following times:**

10:00 a.m. - 16 NCAC 6A .0001 - .0002  
10:30 a.m. - 16 NCAC 6B .0001 - .0002, .0004 - .0006  
11:00 a.m. - 16 NCAC 6D .0102, .0104  
1:00 p.m. - 16 NCAC 6D .0301 - .0302  
1:30 p.m. - 16 NCAC 6E .0101 - .0102, .0104  
2:00 p.m. - 16 NCAC 6E .0202

2:30 p.m. - 16 NCAC 6G .0301 - .0303  
3:00 p.m. - 16 NCAC 6H .0001, .0006 - .0008

**Reason for Proposed Action:**

~~16 NCAC 6A .0001 - .0002; 6B .0001 - .0002, .0004 - .0006; 6D .0102, .0104~~ - Rules are not needed because they address items that are within the authority of local school boards or are covered by statute.

~~16 NCAC 6D .0301 - .0302~~ - amendments clarify state testing program requirements.

~~16 NCAC 6E .0101 - .0102, .0104~~ - amendments clarify student absence policies and allow greater local flexibility in dealing with absences.

~~16 NCAC 6E .0202~~ - amendment allows greater local flexibility in determining course schedules.

~~16 NCAC 6G .0301~~ - this Rule is not needed because it addresses items that are covered by statute.

~~16 NCAC 6G .0302~~ - law requiring this Rule has been repealed.

~~16 NCAC 6G .0303~~ - legislative action to collapse funding categories requires changes to this Rule.

~~16 NCAC 6H .0001, .0006 - .0008~~ - amendments remove material that is covered in state law and federal regulations and update references to federal legislative changes.

**Comment Procedures:** Any interested person may present comments either orally or in writing at the hearing. Written comments may be mailed to the Board but must be post-marked no later than December 15, 1995 and addressed to: Harry Wilson, Rule-making Coordinator, Room 2086, Education Building, Raleigh, NC 27601-2825.

**Fiscal Note:** These Rules do not affect the expenditures or revenues of local government or state funds.

## CHAPTER 6 - ELEMENTARY AND SECONDARY EDUCATION

### SUBCHAPTER 6A - ORGANIZATION PLAN

#### .0001 SCHOOL CALENDAR

(a) The purposes of the school calendar are:

- (1) to provide public school pupils with the instructional term required by G.S. 115C-84(e); and
- (2) to provide the instructional staff of the LEA with opportunity to perform activities such as pupil teacher orientation, evaluation, planning, and in-service training.

(b) The local superintendent, in consultation with public school personnel, recommends the use and placement within the school calendar of holidays, leave and workdays within the 10 calendar months' employment. The LEA approves the school calendar.

(c) Each LEA shall develop rules and regulations to designate the placement of the following within the 10 calendar months of employment period:

- (1) required pupil attendance days;

- (2) annual vacation days required by G.S. 115C-302(a)(3) and 115C-316(a)(3);
- (3) legal holidays; and
- (4) additional days of employment.

(d) LEAs shall establish the duties of personnel on the additional days of employment and the pupil attendance days.

(e) The school month is the period which begins with the first day of the 10 calendar months of employment and ends with the date preceding the date of employment in the following month. Each succeeding school month ends on the same date of the month as the ending date of the first month.

(f) Each LEA shall file a copy of the adopted annual calendar with the Superintendent of Public Instruction or his designee.

**Statutory Authority** G.S. 115C-84; 115C-302.

#### .0002 SUSPENSION OF A PORTION OF THE SCHOOL TERM

(a) The SBE shall consider requests from LEAs to suspend a portion of the school term for one or more schools due to hazardous weather conditions, natural disaster, or other emergency only when the following conditions have been met:

- (1) the request must be by resolution of the LEA, documenting that every effort has been made to insure the opportunity for 180 days of instruction for all students in compliance with G.S. 115C-84(e), specifying the efforts which have been made to enable the students to make up lost work and setting forth the adjustments, if any, which have been made in bus routes and bus driver assignments to assist in keeping schools open and operating to the maximum degree consistent with policy;
- (2) the LEA must demonstrate that 15 days lost due to hazardous weather conditions, natural disaster, or other emergency have been made up within the framework of the 10 month school calendar before any suspension of the school term occurs;
- (3) the requested suspension shall provide no less than 175 days of instruction or the request for suspension must be accompanied by a request for an appropriate number of days of school operation beyond the 10 month term to be funded from the Public School Fund to assure that no less than 175 days of instruction are available to every student in the administrative unit.

(b) The SBE shall, within funds available to it, allocate additional funds to insure that every child has the opportunity to attend school for no less than 175 days.

- (1) LEAs must request these funds in accordance with the procedures of Paragraph (a) of this

Rule:

(2) Funds provided for this purpose are for additional days of school operation beyond the 10 months of employment contained in the basic school calendar. In no event may additional days of employment extend beyond the end of the fiscal year.

(3) Additional days of employment for all school employees resulting from funds allocated under this Rule are a separate contract period and are not a part of the regular contract period.

Authority G.S. 115C-36; 115C-47(11); 115C-84(c); N.C. Constitution, Article IX, Sec. 5.

## SUBCHAPTER 6B - STUDENT TRANSPORTATION SYSTEM

### .0001 SCHOOL BUS DRIVERS

(a) In order to be eligible for employment by a LEA as a school bus driver, a person must meet the requirements of G.S. 20-218(a) and 115C-245. In addition, the person must:

- (1) furnish the local superintendent with a health certificate which complies with G.S. 115C-323;
- (2) have both natural hands and both natural feet, with full use of arms, legs, hands and feet;
- (3) have at least 20/40 vision in each eye, with or without corrective lens; and
- (4) successfully complete the prescribed course in school bus driver training.

(b) A person may not serve as a school bus driver if the person:

- (1) has tampered with the governor or any wires and related parts thereof;
- (2) has willfully damaged and/or abused the bus;
- (3) has tampered with, removed or abused any of the safety equipment installed on the bus so as to make the equipment inoperable or unusable;
- (4) has added to or improvised the standard equipment, which may jeopardize the safety of the pupil passengers; or
- (5) is involved in a school bus accident as a result of driver negligence, as determined by local review.

(c) A person who is disqualified under Paragraph (b) of this Rule or under LEA policy may apply through the principal after six months for reinstatement. If the principal approves the application, the person must again complete the entire training and certification procedure before being qualified to operate a school bus.

Statutory Authority G.S. 115C-240(c).

### .0002 SCHOOL BUS PASSENGERS

(a) LEAs shall provide instruction in school bus safety to all children during the first five days of school and regularly

thereafter during the school year. The LEAs shall include in the instruction basic skills and knowledge vital to safety in school bus transportation.

(b) LEAs shall provide seating for all school bus passengers entitled to transportation according to the rated seating capacity for each specific bus. The LEAs shall not allow the number of passengers being transported to exceed the official rated capacity for the type and model bus being used. All riders must be seated before a bus may leave a stop; over crowding and standees are prohibited.

(c) LEAs shall establish uniform procedures for transporting children with special needs to include:

- (1) recommendation by school based committee;
- (2) inclusion in the written individualized education plan; and
- (3) approval by the transportation director and superintendent.

Statutory Authority G.S. 115C-240(c).

### .0004 BUS ROUTES

(a) Superintendents shall plan bus routes in a way designed to conserve fuel and to use buses efficiently.

(b) A route may not deviate from a general path of direction for a distance of less than one half mile and then return to the original path except for groups of 10 or more pupils, unescorted pupils in grades K-3 or special education pupils.

(c) Unless safety factors require otherwise, superintendents may not plan bus stops closer together than 0.2 miles. Each student must be at the designated stop at the time of the bus's arrival.

(d) Except in an emergency, regular and substitute drivers will transfer a bus at the school.

(e) Drivers shall park buses at night and on weekends in locations which lessen opportunities for persons to steal fuel and commit vandalism.

(f) Service personnel shall maintain buses to ensure greatest fuel economy.

(g) Each LEA will establish the time required for each bus route and certify this time. The LEA will use this certified time to contract with the driver for each route operated. The LEA will determine the hourly rate of pay by a salary schedule adopted by the SBE.

Statutory Authority G.S. 115C-240(a).

### .0005 SCHOOL BUS MAINTENANCE

The transportation supervisor or chief mechanic shall organize and carry out a systematic plan of maintenance and preventive maintenance for all school buses on a daily and annual basis. The LEA may transport pupils only on buses maintained in safe condition.

Statutory Authority G.S. 115C-240(a).

### .0006 SCHOOL BUS INSPECTIONS

~~LEAs shall inspect school buses annually as required by G.S. 20-183.2 and at such other times as are required by G.S. 115C-248.~~

*Statutory Authority G.S. 115C-240(a).*

## **SUBCHAPTER 6D - INSTRUCTION**

### **SECTION .0100 - CURRICULUM**

#### **.0102 BASIC EDUCATION PROGRAM**

~~(a) Each LEA shall implement the BEP as developed by the Department, to the extent that state funds are made available to it. This Rule covers the curricular component of the BEP.~~

~~(b) The standard course of study includes, at least, a program of studies in the following areas:~~

- ~~(1) arts education;~~
- ~~(2) communication skills;~~
- ~~(3) guidance;~~
- ~~(4) healthful living;~~
- ~~(5) library/media skills;~~
- ~~(6) mathematics;~~
- ~~(7) science;~~
- ~~(8) second language studies;~~
- ~~(9) social studies; and~~
- ~~(10) vocational education.~~

*Statutory Authority G.S. 115C-12(9)c.; 115C-81.*

#### **.0104 EXIT DOCUMENTS**

~~(a) Each LEA designs and issues high school diplomas and certificates.~~

~~(b) LEAs must issue all diplomas and certificates to students with a notification that the student may obtain a transcript upon request.~~

*Statutory Authority G.S. 115C-12(9)c..*

## **SECTION .0300 - TESTING PROGRAMS**

#### **.0301 TESTING REQUIREMENTS AND OPPORTUNITIES**

~~(a) All public school students enrolled in the grades for which the state board adopts an annual test must participate in the testing program, program, including every child with disabilities unless excluded from testing in the IEP.~~

~~(b) All public students enrolled in the 10th, 10th, 11th and 12th grade will have the at least one opportunity each school year to take the competency tests. LEAs shall administer the tests so that any student who does not pass the tests shall have a full year in which an opportunity to receive remediation.~~

- ~~(1) The department establishes a passing score for each test. A student who attains a passing score on a test does not need to retake the test.~~
- ~~(2) The LEA develops plans to provide remedial~~

services to students who fail any of the tests, or who are identified as having a high risk of failing. The LEA designs the plan to meet the needs of individual students.

~~(c) LEAs may change the form or content of tests adopted by the SBE if necessary to allow special education students to participate in the testing program.~~

~~(d) LEAs may exempt special education students from required testing programs upon written request of the parent or eligible student.~~

*Statutory Authority G.S. 115C-12(9)c..*

#### **.0302 TEST ADMINISTRATION**

~~(a) Employees of the LEA administer tests to students who are required or permitted to participate.~~

~~(b) The department supplies the tests to the LEAs.~~

~~(c) LEAs shall:~~

- ~~(1) account to the department for all tests received;~~
- ~~(2) provide a locked storage area for all tests received;~~
- ~~(3) prohibit the reproduction of all or any part of the test; and~~
- ~~(4) prohibit their employees from disclosing the content of, or specific items contained in, the test to persons other than authorized employees of the LEA.~~

~~(d) LEAs must monitor test administration procedures. If the LEA discovers school officials discover any instance of improper administration and it determines that the validity of the test results has been affected, it they must notify the local board of education and order the affected students to be retested.~~

~~(e) The Superintendent of Public Instruction may conduct audits of LEAs if he receives written complaints which allege improper test administration, and he may require the retesting of students.~~

~~(f) The department scores or has scored all tests, and it provides scoring and interpretive services to the LEA.~~

*Statutory Authority G.S. 115C-12(9)c..*

## **SUBCHAPTER 6E - STUDENTS**

### **SECTION .0100 - ATTENDANCE**

#### **.0101 ATTENDANCE DEFINED**

To be considered in attendance, a student must be present in the school for at least one half of the school day or at a place other than the school with the approval of the appropriate school official to attend an authorized school activity. These activities include field trips, athletic contests, student conventions, music festivals or similar activities.

*Statutory Authority G.S. 115C-379.*

#### **.0102 ATTENDANCE EXCUSED**

(a) LEAs shall excuse the temporary absence of a student upon a showing of satisfactory evidence of one of the following bases:

- (1) Illness or injury prevents the student from being physically able to attend school.
- (2) The local health officer or the State Board of Health orders the isolation of the student.
- (3) The student is absent due to the death of a member of the immediate family.
- (4) The student has an emergency medical or dental appointment ~~or such an appointment which has been approved in advance by the principal.~~
- (5) The student is a party to or is under subpoena as a witness in the proceedings of a court or administrative tribunal.
- (6) The student ~~has obtained prior approval by the principal to be absent due to the observance of an event required or suggested by the religion of the student or the student's parents.~~ is absent due to a religious observance in accordance with local school board policy.
- (7) The student obtains prior approval to take advantage of a valid educational opportunity, such as travel.

(b) LEAs may excuse temporary or occasional absences for other reasons in accordance with local board policies, provided that the student has been in attendance for at least one-half of the school day.

Statutory Authority G.S. 115C-379.

#### .0104 INVOLUNTARY SUSPENSIONS

The absence of a student which results from the suspension or expulsion of that student for misconduct pursuant to the provisions of G.S. 115C-391 is not an unexcused absence. may not be used for a compulsory attendance violation action.

Statutory Authority G.S. 115C-379.

### SECTION .0200 - SCHOOL ATHLETICS AND SPORTS MEDICINE

#### .0202 INTERSCHOLASTIC ATHLETICS

(a) Only students in grades 7-12 may participate in interscholastic athletic competition. In order to qualify for public school participation, a student must meet the following requirements:

- (1) The student must meet the residence criteria of G.S. 115C-366(a). The student may participate only at the school to which the student is assigned by the LEA or, if over the age requirements, the school to which the student would be assigned at the next higher grade level.
- (2) The student must meet age requirements at each grade level to participate. The principal must have evidence of the legal birth date of the

student. A student who is ineligible to participate at one grade level due to age is eligible to participate at the next higher grade level only. However, no student may participate at the high school level for a period lasting more than eight consecutive semesters, beginning with the student's first entry into grade nine or participation on a high school team, whichever occurs first.

- (A) A student is eligible to participate in high school athletic contests during a school year if the student does not reach the 19th birthday on or before October 16 of that school year.
- (B) A student shall not participate on a ninth grade junior high school team if the student becomes 16 years of age on or before October 16 of that school year.
- (C) A student shall not participate on a seventh or eighth grade team if the student becomes 15 years of age on or before October 16 of that school year.
- (3) In grades 9-12, the student must pass at least ~~five courses 75% of the maximum possible courses~~ each semester and meet promotion standards established by the LEA. In grades 7 and 8, the student must meet state and local promotion standards and maintain passing grades each semester. Regardless of the school organization pattern, a student who is promoted from the eighth grade to the ninth grade automatically meets the courses passed requirement for the first semester of the ninth grade.
- (4) The student must receive a medical examination each year (365 days) by a duly licensed physician, nurse practitioner, or physician assistant, subject to the provisions of G.S. 90-9, 90-18.1, and 90-18.2.
- (5) The student may not participate after any of the following:
  - (A) graduation;
  - (B) becoming eligible to graduate;
  - (C) signing a professional athletic contract;
  - (D) receiving remuneration as a participant in an athletic contest; or
  - (E) participating on an all-star team or in an all-star game that is not sanctioned by the association of which the student's school is a member. The student is ineligible only for the specific sport involved.

(b) Each principal of a school which participates in interscholastic athletics must certify a list of eligible students for each sport.

(c) Any student-athlete, coach or school official in grades 7-12 who is ejected from any athletic contest shall be penalized as follows:

- (1) for the first offense, the person shall be reprimanded and suspended for the next game at that

level of play (varsity or junior varsity) and for any intervening games at either level;

(2) for a second offense, the person shall be placed on probation and suspended for the next two games at that level of play (varsity or junior varsity) and for any intervening games at either level.

(3) for a third offense, the person shall be suspended for one calendar year.

(4) A coach who is suspended at any level of grades 7-12 (middle school, junior high or high school) may not coach in any other grade level in grades 7-12 during the period of suspension.

(5) Penalties are cumulative from sport to sport and from sport season to sport season. If no member of the school's coaching staff is present to assume an ejected coach's duties, the contest shall be terminated by a forfeit.

(d) LEAs may allow their schools to belong to the North Carolina High School Athletic Association (NCHSAA), which has established as a minimum the rules adopted by the SBE. The NCHSAA may waive any eligibility requirement contained in this Rule, except the age requirement, if it finds that the rule fails to accomplish its purpose or it works an undue hardship when applied to a particular student. The NCHSAA may enforce penalties for the violation of this Rule at the high school level.

(e) The LEA which has jurisdiction over the school may impose additional penalties. LEAs or conferences may adopt and impose penalties at the middle and junior high school levels.

*Statutory Authority G.S. 115C-47(4).*

## SUBCHAPTER 6G - EDUCATION AGENCY RELATIONS

### SECTION .0300 - PERFORMANCE-BASED ACCOUNTABILITY PROGRAM

#### .0301 LOCAL SCHOOL IMPROVEMENT PLANS

(a) Student performance goals must be stated in three year goals, including annual milestones to measure progress toward these goals. The purpose of these goals is to increase student performance.

(b) Satisfactory progress toward meeting student performance goals is defined as achievement of 75% of the annual milestones listed in the approved local school improvement plan.

(c) LEAs may set locally determined student performance goals in addition to those adopted by the SBE pursuant to G.S. 115C-238.1(3). In setting these goals, the LEA must:

(1) establish local student performance goals for any remaining state accreditation performance standards that it does not currently meet;

(2) establish some local student performance goals that are higher than the performance standards in

state accreditation; and

(3) establish, for school years after the LEA's first year of participation, student performance goals in additional curricula areas or in additional grade levels not addressed in state accreditation.

(d) LEAs may also:

(1) develop student performance goals in additional curricula areas not currently addressed in state accreditation; and

(2) add additional indicators such as California Achievement Test scores at grades 4, 5 and 7.

(e) The indicators that are included in the state accreditation performance standards, along with Scholastic Aptitude Test scores, are required for measuring and assessing student performance. Additional end of course and end of grade tests will be added to these indicators as they are developed.

(f) LEAs may, but are not required to, include as indicators for measuring and assessing student performance and satisfactory performance factors such as:

(1) post secondary plans;

(2) enrollment in Algebra 1; and

(3) college enrollees who require remediation.

(g) LEAs that develop an evaluation instrument or approach other than the teacher performance appraisal instrument must describe that instrument or approach in the local school improvement plan.

*Statutory Authority G.S. 115C-238.1.*

#### .0302 DIFFERENTIATED PAY

(a) No LEA may adopt a differentiated pay plan that includes an across the board salary supplement for all employees.

(b) After an LEA that uses the school based performance model for differentiated pay attains local school goals, the local board of education, upon recommendation of the principal and superintendent, shall determine which staff members contributed to the attainment of those goals. The LEA will then distribute differentiated pay bonuses to these employees. A school based committee that participates in the review of bonus distribution serves only in an advisory role to the principal, who bears the final responsibility for evaluating the performance of staff and deciding whom to recommend to the superintendent for bonus distribution.

*Statutory Authority G.S. 115C-238.1; 115C-238.3; 115C-238.4.*

#### .0303 FLEXIBLE FUNDING

(a) LEAs that request a waiver of the purpose for which state funds may be used must submit a justification that shows how the waiver is necessary for the LEA to reach its local accountability goals.

(b) Fund transfers that create position from nonposition categories must include matching benefit costs.

(c) Converting or transferring positions or portions of

positions from varying lengths of employment must be on a prorata basis and at the beginning salary level of the original classification.

(d) The LEA must request specific permission to use funds for purposes that are not currently authorized.

(e) LEAs may request to transfer positions or portions of positions to dollars for the purpose of one time expenditures such as capital outlay, administrative equipment or software.

(f) Fund transfers cannot obligate the state to a greater cost than the original allotment.

(g) Waivers will not be considered or granted for. The SBE will not consider or grant waivers for:

- (1) teacher assistants;
- (2) matching state funds for federal vocational education;
- (3) transportation;
- (4) employee benefits, including annual leave and longevity;
- (5) group homes;
- (6) Willie M.; and
- (7) developmental day care; and
- (8) all federal funds.

Statutory Authority G.S. 115C-238.1.

## SUBCHAPTER 6H - FEDERAL PROGRAMS

### .0001 DEFINITIONS

As used in this Subchapter:

- (1) "Children with special needs" means:
  - (a) all school age children who have handicapping conditions as contained in 20 U.S.C. 1401(1) and as defined by 34 CFR 300.5;
  - (b) academically gifted students, which are those who:
    - (i) possess demonstrated or potential intellectual, creative or specific academic abilities; and
    - (ii) need differentiated educational services beyond those being provided by the regular school program in order to realize these potentialities. A student may possess singularly or in combination these characteristics: general intellectual ability, specific academic aptitude, creative or productive thinking abilities.
  - (c) pregnant students who because of their pregnancy require special education and/or related services other than those which can be provided through regular education services; and
  - (d) "Willie M." class members, who are children under age 18 who now or will in the future suffer from serious emotional, mental or neurological handicaps, which handicaps have been accompanied by behavior which is characterized as violent or assaultive; and who are or will be in the future involuntarily placed in institutions or otherwise placed in residential programs; and who have not been provided appropriate treatment and education programs by the state.

- (2) ~~ment and education programs by the state.~~  
(1) "Free appropriate public education" (FAPE) is defined by 34 CFR 300.4.
- (3) ~~(2) "Individualized education program" (IEP) is defined by 34 CFR 300.340.~~  
(2) ~~"Least restrictive appropriate setting" is the same as "least restrictive environment" (LRE) and means that setting among all appropriate alternatives or environments for placement within an educational system in which a child can obtain the educational services which meet the child's individual educational needs as close to and as nearly like a regular classroom setting as possible.~~  
(3) ~~"Parent" is defined by 34 CFR 300.10.~~  
(4) ~~"Willie M." class members, who are children under age 18 who now or will in the future suffer from serious emotional, mental or neurological handicaps, which handicaps have been accompanied by behavior which is characterized as violent or assaultive; and who are or will be in the future involuntarily placed in institutions or otherwise placed in residential programs; and who have not been provided appropriate treatment and education programs by the state.~~  
(5) ~~"Related services" is defined by 34 CFR 300.13.~~  
(6) ~~"Special education" is defined by 34 CFR 300.14.~~

Statutory Authority G.S. 115C-141.

### .0006 NON-INSTRUCTIONAL SPECIAL EDUCATION SERVICES

(a) Transportation.

- (1) LEAs are responsible for providing or paying for the costs of transportation for children with special needs disabilities enrolled in the schools or programs under their jurisdiction. They are also responsible for providing or paying for the costs of transportation to any nonresidential program, public or private, if the student has been placed in or assigned to that program by the LEA. Special funds may be provided for this purpose through the Director, Division of Transportation of the department and are incorporated in the general transportation plan of the LEA.
- (2) If a child with special needs disabilities is assigned to or enrolled in a residential program operated by or under the jurisdiction of the Departments of Human Resources or Correction, the department operating the program or having jurisdiction or control over the program is responsible for paying the costs of transportation.
- (3) The costs of transportation for a child with special needs disabilities placed in or assigned to a school or program outside the state are paid by the LEA placing or assigning the child.

(4) Reimbursement for transportation costs paid for any one child may not exceed the Department of Transportation allowance per mile unless it is demonstrated by the child or his/her parents that this limitation will work a hardship or is unreasonable. The LEA and the appropriate state agency must approve this justification.

(b) LEAs shall determine and arrange for the provision of all materials, supplies and equipment essential to the instructional programs for children with special needs.

*Statutory Authority G.S. 115C-141.*

**.0007 SPECIAL EDUCATION ASSESSMENT AND PLACEMENT PROCEDURES**

(a) Identification, screening, evaluation and placement.

(1) LEAs are responsible for insuring that all children with special needs within their jurisdiction are identified, located and evaluated, including children in private agencies within their jurisdiction ages birth through ~~18~~, 21.

(2) LEAs and private schools shall implement procedures for identification, screening, evaluation and placement of children with special needs. The governing body of each LEA and private school shall adopt these procedures and include the procedures described in this Rule. LEAs may vary these procedures when sufficient evidence exists to indicate that children can be identified and placed properly within the intent of the procedures.

(b) Upon referral of a child pursuant to G.S. 115C-113(c), the parties must follow the due process safeguards of Rule .0010 of this Subchapter.

(c) The multi-disciplinary team shall evaluate or reevaluate each child with special needs in accordance with the provisions of 34 CFR 300.530 through 300.534. Evaluations of children suspected of having a specific learning disability are subject to the further provisions of 34 CFR 300.540 through 300.543.

(d) Individualized education program.

(1) Each LEA shall develop and implement an IEP for each child with ~~special needs~~, a disability. The Department of Public Instruction monitors the effectiveness of these programs.

(2) All IEPs must be developed in accordance with the provisions of 34 CFR 300.342 through 300.349.

(3) The LEA shall develop an IEP for any child with a disability who is enrolled in a parochial or other private school, but who receives special education or related services from the LEA.

(4) The LEA must supply to the parent(s) or guardian during a conference or by mail, in language understandable to the general public and in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so:

(A) a copy of the IEP if requested;

(B) a description of the rights of the parent(s), including the right to review data, to challenge the data, and to provide additional data that could have some effect on the placement, program, and/or services of the child;

(C) information concerning their right to an independent educational evaluation, at public expense, if they disagree with the evaluation obtained by the LEA and a list of other agencies providing free evaluations; and

(D) information concerning the right to appeal the decision and a copy of the appeals procedure.

(5) The LEA shall prepare Group Education Programs (GEPs) for academically gifted students. The GEP describes a differentiated instructional program for students who share similar academic characteristics and/or program needs. The LEA should individualize the program to accommodate individual students' ~~needs~~. The GEP must include:

(A) ~~a brief statement of program content;~~

(B) ~~annual goals;~~

(C) ~~methods and procedures for determining that the goals have been met; and~~

(D) ~~needs and~~ any additional needs of a student not already addressed and a description of further necessary modifications.

(6) The LEA shall prepare and implement a written program to meet the special educational needs of pregnant students.

(e) The LEA must complete appropriate in-depth evaluations of children with ~~special needs~~ a disability at least every three years in order to determine the appropriateness of the current educational status of students. ~~The three year period is computed from the date of the oldest evaluation data used in placement of the student. The reevaluations include the evaluations required prior to the initial placement.~~ Parent approval is not required prior to reevaluation. The parent(s) must be notified in writing of the results of the reevaluation and the recommendations based on them, and the notice must meet the requirements of 34 CFR 300.505. If the parent objects, the due process procedures set forth in Rule .0010 of this Subchapter apply.

(f) Each LEA shall make available a continuum of programs, services and placements for each child with ~~special needs~~ a disability in accordance with the provisions of 34 CFR 300.550 through 300.553.

(g) Every private or nonpublic school which provides special education or related services to children with ~~special needs~~ disabilities who have been placed in such school by the LEA is subject to the provisions of 34 CFR 300.400 through 300.403.

(h) Willie M. Children.

(1) Location and identification of class members.

(A) Local school administrative units shall nomi-

nate to area mental health centers children that are suspected to be members of the Willie M. class.

(B) Local school administrative units shall request informed consent from parents to conduct additional evaluations if needed.

(C) Local school administrative units shall notify the Department of Public Instruction regarding the number of children nominated.

(D) Local school administrative units shall keep an ongoing register of all identified Willie M. class members.

(E) The Department of Public Instruction will assign staff to the state level certification committee to assist in the certification of members of the Willie M. class.

(2) Provision of educational services.

(A) For certified Willie M. class members local school administrative units shall:

- (i) provide special education services in compliance with an IEP.
- (ii) use data received through the evaluations conducted by the area mental health centers and other sources in writing the IEP; and
- (iii) provide special education and/or related services to certified class members who are located in group homes or special facilities. Certified class members may receive these special programs in the group home or special facility.

(B) The LEA shall decide the location of the program, with advice from the area mental health center.

(C) Local school administrative units shall notify the Department of Public Instruction of the special education program being provided, including:

- (i) types of services;
- (ii) the duration of services; and
- (iii) any other information the department deems relevant.

(D) The Department of Public Instruction will provide training to personnel who provide educational services to class members.

(3) Monitoring. The SBE through the Division for Exceptional Children monitors local school administrative units and/or other facilities which provide educational services to class members to determine if the program is appropriate to meet the needs of the child. This Paragraph (3) is not effective unless funds are appropriated for the specific purpose of implementing its provisions.

Statutory Authority G.S. 115C-141.

#### .0008 SURROGATE PARENTS FOR

### CHILDREN WITH SPECIAL NEEDS

#### (a) Selection of surrogate parents.

(1) ~~The Superintendent of Public Instruction and the Secretary of Human Resources shall recruit, train and maintain a registry of eligible persons to act as surrogate parents. LEAs, the Council for Educational Services for Exceptional Children and the Advocacy Council for the Developmentally Disabled and Mentally Ill may make recommendations to the superintendent and secretary of potentially eligible persons to act as surrogate parents.~~

(2) ~~Surrogate parents may have no interest that conflicts with the interests of the child represented. They must have knowledge and skills which ensure adequate representation of the child. A surrogate parent must not be an employee of the state or any local government, educational or human resources agency responsible for the education or care of the child; however, a person is not considered to be such an employee solely because the person is paid by the agency to serve as a surrogate parent.~~

(3) ~~The following factors may be, but are not required to be, considered in the selection of a surrogate parent:~~

- (A) relationship to the child;
- (B) whether the prospective surrogate parent is of the same race as the child.

(b) Procedures for determining and assigning surrogates.

(1) ~~A person who educates or treats children and who is aware that a child may need a surrogate parent appointed may request the appointment of a surrogate. The grounds for appointment are contained in 34 CFR 300.514. The person sends the request to the LEA which is responsible for the child. The LEA will send a copy of this request to the secretary or the superintendent, depending on which agency has jurisdiction.~~

(2) ~~The LEA shall send a notice of the need for a surrogate to the adult in charge of the child's place of residence and to the parents or guardians at their last known address.~~

(3) ~~The LEA may request the superintendent or the secretary to appoint a hearing officer to hear evidence and determine whether it is necessary to appoint a surrogate. Any such hearing is governed by Article 3, Chapter 150B of the General Statutes. The hearing officer shall submit findings to the LEA and the Department of Public Instruction or the Department of Human Resources. The assignment of a surrogate as the result of a hearing must be made within 30 days after the hearing decision.~~

(4) ~~The secretary assigns surrogates in all human resources matters. The superintendent makes all~~

~~other assignments.~~

~~(e) The surrogate parent shall represent the child in all matters relating to the identification, evaluation and educational placement of the child and the provision of a free appropriate public education to the child, including the appeal of placement decisions.~~

LEAs shall appoint surrogate parents for children with disabilities as provided in 34 C.F.R. 300.514.

Statutory Authority G.S. 115C-141.

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## TITLE 17 - DEPARTMENT OF REVENUE

**N**otice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Revenue intends to adopt rules cited as 17 NCAC 9K .0201 - .0206, .0401, .0501 - .0513, .0601 - .0602; 9L .0301 - .0302, .0401 - .0404, and repeal rules cited as 17 NCAC 9G .0102, .0104 - .0105, .0107, .0201, .0203, .0301 - .0304, .0306, .0402 - .0404, .0502 - .0509, .0512, .0514, .0516; 9H .0102 - .0103, .0105, .0202 - .0203, .0206 - .0210, .0302 - .0303, .0305 - .0306 and .0409.

**Temporary:** These Rules were filed as temporary rules. The adopted rules are effective January 1, 1996 and the repeals are effective November 30, 1996.

**Proposed Effective Dates for the Permanent Rules:** Adoptions - March 1, 1996, Repeals - November 30, 1996.

**G.S. 150B-1(d)(4) exempts the Department of Revenue from Part 2 Article 2A of Chapter 150B with respect to the notice and hearing requirements. The Department will however publish the text of proposed rules in the North Carolina Register prior to the scheduled time of review by the Rules Review Commission.**

**Reason for Proposed Action:** Senate Bill 943 was ratified to amend Subchapter V of Chapter 105 of the General Statutes by repealing Articles 36 and 36A and adding 36C and 36D.

**Comment Procedures:** Written public comments should be addressed to Jack L. Harper, Assistant Secretary for Tax Administration, PO Box 871, Raleigh, NC 27602-0871. Comments must be received by December 15, 1995.

**Fiscal Note:** These Rules do not affect the expenditures or revenues of state or local government funds.

## CHAPTER 9 - MOTOR FUELS TAX DIVISION

### SUBCHAPTER 9G - MOTOR FUELS TAX DIVISION

#### SECTION .0100 - APPLICATION FOR AND

## CANCELLATION OF LICENSE AS A DISTRIBUTOR

### .0102 DISTRIBUTORS CLASSIFIED ACCORDING TO TYPES OF OPERATIONS

~~A gasoline supplier is any distributor licensed under G.S. 105-433 who imports motor fuel into North Carolina by pipeline or seagoing vessel and operates a terminal facility at a pipeline port or seaport for sale or delivery of motor fuel to other distributors. A gasoline distributor is any distributor licensed under G.S. 105-433 who does not import motor fuel into North Carolina by pipeline or seagoing vessel, nor operate a terminal facility at a pipeline port or seaport for sale or delivery to other distributors.~~

Statutory Authority G.S. 105-262; 105-430; 105-433.

### .0104 AMOUNT OF BOND OR IRREVOCABLE LETTER OF CREDIT REQUIRED

~~The amount of motor fuels distributor's bond or irrevocable letter of credit shall be rounded to the nearest one thousand dollars (\$1,000.00). If the amount required is exactly between two one thousand dollar (\$1,000.00) increments, the amount shall be rounded to the higher of the two.~~

Statutory Authority G.S. 105-262; 105-433.

### .0105 TYPES OF ACCEPTABLE BONDS

~~The Motor Fuels Tax Division will accept surety bonds on Form Gas. 1212, furnished by this Division, executed by any surety company licensed to do business in this State. The Division will also accept bonds secured by the following types of collateral:~~

- ~~(1) Certificates of deposit or cashier's checks, made payable to the taxpayer;~~
- ~~(2) Negotiable U.S. Treasury bonds;~~
- ~~(3) Negotiable U.S. Treasury notes;~~
- ~~(4) Public School Facilities bonds;~~
- ~~(5) Housing Finance Agency bonds;~~
- ~~(6) General Obligation Bonds of the State of North Carolina or its political subdivisions; and~~
- ~~(7) Revenue Bonds of the State of North Carolina or its political subdivisions with a rating of at least BAA or BBB.~~

~~Notes and bonds tendered as collateral must have a fair market value at least equal to 115 percent of the collateral required.~~

Statutory Authority G.S. 105-262; 105-433.

### .0107 IRREVOCABLE LETTER OF CREDIT

~~The Motor Fuels Tax Division will accept an irrevocable letter of credit executed on the Department's Form Gas. 1220.~~

Statutory Authority G.S. 105-262; 105-433.

**SECTION .0200 - FIRST SALE TO LICENSED DISTRIBUTORS FROM PIPELINE OR PORT TERMINALS**

**.0201 TRANSPORT SALES**

The first sale in North Carolina at pipeline or port terminals in tank car or transport truck shipments to licensed distributors within the state shall not include the North Carolina motor fuels tax and inspection fee. The tax shall be levied against and paid by such licensed distributors. Any sale after the first sale and sales made in less than transport loads must include the North Carolina motor fuels tax and inspection fee.

Statutory Authority G.S. 105-262; 105-432; 119-17; 119-18.

**.0203 TRANSPORT LOADS**

A tank car or transport truck load is a shipment of gasoline, kerosene, or fuel oil with a minimum capacity of 3,500 gallons. The load may consist of gasoline and kerosene or kerosene and fuel oil.

Statutory Authority G.S. 105-262; 105-432.

**SECTION .0300 - REPORTING REQUIREMENTS**

**.0301 METHODS OF REPORTING THE TAX**

Every gasoline distributor and gasoline supplier may elect to report on the "sales basis" or "receipts basis" of computing the motor fuels tax and inspection fees; however, the method of reporting shall not change without written permission from the Director of the Motor Fuels Tax Division.

A gasoline distributor or supplier that has elected to report and pay the motor fuels tax on the "sales basis" shall compute the tax and/or inspection fees on the total gallons of motor fuel or kerosene sold, delivered to dealers on consignment, used, or disbursed for use during a calendar month.

A gasoline distributor that has elected to pay the motor fuels tax on the "receipts basis" shall compute the tax and/or inspection fees on total gallons of motor fuel or kerosene purchased or imported during a calendar month, reduced by the total gallons delivered out of state, and further reduced by the tare allowance allowed by G.S. 105-434.

A gasoline supplier that has elected to report and pay the motor fuels tax on the "receipts basis" may elect one of the following methods as the basis of reporting receipts:

- (1) first receipts: motor fuels tax and/or inspection fees accrue at the time motor fuel or kerosene is received at the port of entry, port terminals or other port of receipt;
- (2) terminal disbursements: motor fuels tax and/or inspection fees accrue at the time motor fuel and kerosene is disbursed from North Carolina seaport or pipeline terminals or received at other ports of entry or other points of receipt.

Statutory Authority G.S. 105-262; 105-434; 119-17; 119-18.

**.0302 TARE ALLOWANCE**

(a) A gasoline supplier using the first receipts method of paying the tax is entitled to a tare allowance on all receipts less sales to licensed distributors, exchanges and exports.

(b) A gasoline supplier using the terminal disbursements method is entitled to a tare allowance on all disbursements from pipeline port or seaport terminals, less sales to licensed distributors, exchanges and exports; however, no tare is allowed on the following:

- (1) product delivered to a non-licensed distributor or consumer taking delivery in his own transport truck;
- (2) product delivered to a non-licensed distributor or consumer hauled by common carrier with the non-licensed distributor or consumer paying the freight charges.

Statutory Authority G.S. 105-262; 105-434.

**.0303 CONSIGNMENT SERVICE STATIONS**

A gasoline distributor or supplier using the sales method of paying the motor fuels tax and inspection fee must report and pay the tax on gallons of motor fuel delivered to consignment locations.

Statutory Authority G.S. 105-262; 105-434; 119-17; 119-18.

**.0304 ADDITIVES TAXABLE**

All additives, including motor oil, that are added to gasoline before it is sold are subject to the motor fuels tax and inspection fee.

Statutory Authority G.S. 105-262; 105-434; 119-17; 119-18.

**.0306 REPORTING INFORMATION IN PROPER REPORTING PERIOD**

All motor fuels transactions shall be reported on the monthly gasoline tax report for the month that the transaction occurred, as transactions that occur during a calendar month cannot be carried over to the next month's report.

Statutory Authority G.S. 150-262; 105-432.

**SECTION .0400 - REBATES FOR FUELS SOLD TO THE UNITED STATES GOVERNMENT AND PUBLIC SCHOOLS**

**.0402 DOCUMENTING SALES TO THE UNITED STATES GOVERNMENT**

The following alternatives may be used by distributors as a means of documenting, on their tax returns, sales of motor fuels to the United States Government that are exempt from the motor fuels tax:

- (1) Listing or computer run of sales to the U.S. Government; or

- (2) Sales invoice copies certified by the distributor; or
- (3) U.S. Government Tax Exemption Certificate, Form 1094.

~~When listing or computer runs are used, distributors must retain copies of sales invoices to support the exemption claimed.~~

*Statutory Authority G.S. 105-262; 105-439.*

**.0403 SALES TO U.S. GOVERNMENT: REFUND FORM GAS. 1206**

~~(a) The first section of form 1206 is to be completed by vendors that have sold tax paid motor fuels to the U.S. Government at a price that did not include the motor fuels tax. Copies of sales invoices must be submitted with the application.~~

~~(b) The second section of form 1206 is to be completed by U.S. Government agencies to secure refunds on the tax on motor fuels that were purchased at a price that included the motor fuels tax. Copies of purchase invoices must be submitted with the application.~~

*Statutory Authority G.S. 105-262; 105-439.*

**.0404 EXEMPTION OF MOTOR FUELS: PUBLIC SCHOOLS AND STATE AGENCIES**

~~An application for, and the acceptance of a credit card for the purchase of motor fuels by a city or county board of education or a state agency shall constitute a "contract" as required by G.S. 105-449 and G.S. 105-449A. If a purchase of motor fuel is for a dollar amount that is less than the amount that requires vendors by law to have a state contract then G.S. 105-449 and G.S. 105-449A do not require the vendor to hold a state contract.~~

*Statutory Authority G.S. 105-262; 105-449; 105-449A.*

**SECTION .0500 - REFUNDS**

**.0502 NON-HIGHWAY REFUND APPLICATION INFORMATION**

~~The following information must be given on the application for refund of tax paid on motor fuels used for non highway purpose:~~

- (1) Name of machinery or equipment in which motor fuel will be used and engine or motor number;
- (2) Type of storage equipment used for storing motor fuel used for highway and non highway purposes and storage capacity;
- (3) If the applicant is a farmer, each kind of crop and number of acres under cultivation;
- (4) Make, type of vehicles, model and license number, if motor fuel is used in licensed motor vehicles from the same storage tank from which non highway equipment is serviced;
- (5) Number of gallons of motor fuel on hand at the beginning of refund period and number of gallons

- (6) ~~on hand at the end of the refund period;~~
- ~~Number of gallons used for non highway purposes; and if motor fuel is used from same storage to operate both licensed motor vehicles and non highway equipment, the number of gallons used during the refund period in licensed motor vehicles.~~

*Statutory Authority G.S. 105-262; 105-440; 105-446.*

**.0503 NON-HIGHWAY REFUND INVOICE REQUIREMENTS**

~~An invoice for each purchase of motor fuel must be submitted with the application for refund for purchases made for non highway use during the refund period. Invoices must show the date of purchase, name of both purchaser and seller, gallons purchased, price per gallon and amount paid. A daily, weekly or monthly statement of purchases of motor fuels is acceptable provided it is prepared by the seller, and shows all of the information on each purchase of motor fuels that is required on an individual invoice. Invoices and statements showing alterations or erasures are not acceptable. If no claim was filed for the preceding refund period, an invoice or statement of purchases must be attached to substantiate inventory at the beginning of the refund period.~~

*Statutory Authority G.S. 105-262; 105-440; 105-446.*

**.0504 NON-HIGHWAY USERS WITH COMMON STORAGE FACILITIES**

~~No refund is due on motor fuels used to operate the engine of a motor vehicle licensed to travel on the streets and highways, unless otherwise provided by law. If motor fuel is used from the same storage tank from which licensed motor vehicles and non highway equipment are serviced, a daily use record must be kept to substantiate the amount withdrawn for licensed motor vehicles or non licensed equipment. These records are to be kept for three calendar years from the date the refund application was due to be filed.~~

*Statutory Authority G.S. 105-262; 105-446.*

**.0505 STATIONARY ENGINE MOUNTED ON A LICENSED MOTOR VEHICLE**

~~No refund is due on motor fuels used to operate a stationary engine mounted on a licensed motor vehicle, except concrete mixer vehicles, solid waste compacting vehicles and certain agricultural delivery vehicles as defined by G.S. 105-446.5, if motor fuel is used from the same storage tank mounted on the vehicle for the purpose of operating both the stationary engine and the engine used to propel a licensed motor vehicle over the streets and highways.~~

*Statutory Authority G.S. 105-262; 105-446; 105-446.5.*

**.0506 NON-HIGHWAY USERS WITH SEPARATE**

**TANKS**

If separate tanks are used for storage of motor fuels for highway and non highway use, the seller must indicate on the invoices at the time of delivery whether the motor fuel is for highway or non highway use.

Statutory Authority G.S. 105-262; 105-446.

**.0507 DEALERS DELIVERING FUEL INTO NON-HIGHWAY EQUIPMENT**

Dealers of non highway equipment powered by motor fuel are entitled to a refund on motor fuel placed into their equipment provided there is no charge for the fuel when the equipment is sold. If the motor fuel is sold, the purchaser is entitled to refund on the motor fuel purchased and used.

Statutory Authority G.S. 105-262; 105-446.

**.0508 VEHICLES WITH SPECIAL MOBILE EQUIPMENT LICENSE**

A claimant operating a vehicle with a special mobile equipment tag is not entitled to a refund on any fuel that is used while operating the motor vehicle on the streets and highways.

Statutory Authority G.S. 105-262; 105-446.

**.0509 REMOVAL OF LICENSE PLATE**

In order to obtain a refund, a person may remove his license plates and surrender the plates to the Commissioner of Motor Vehicles, or his agents, or the Motor Fuels Tax Division, North Carolina Department of Revenue, for the period the vehicles will not be operating on the streets and highways.

Any person requesting refund on tax paid motor fuel used in motor vehicles on which the license plates have not been removed and surrendered to the Commissioner of Motor Vehicles, or his agents, or the Motor Fuels Tax Division, will have his refund claim disallowed.

Statutory Authority G.S. 105-262; 105-446.

**.0512 MUNICIPALITIES AND CONTIGUOUS MUNICIPALITIES**

In order to define municipalities and contiguous municipalities, the Motor Fuels Tax Division will follow the North Carolina Utilities Commission Rule R2-69, which is incorporated by reference, and includes any future amendments. This rule can be obtained free of charge from the Chief Clerk at the Utilities Commission.

Statutory Authority G.S. 105-262; 105-446.3.

**.0514 PROPORTIONAL REFUNDS: FORM GAS 1200C**

Operators of concrete mixing vehicles, solid waste compacting vehicles and agricultural delivery vehicles as

defined by G.S. 105-446.5 must file Form Gas. 1200C to obtain a refund of tax paid motor fuels used in the operations of such vehicles.

This application requires an accounting of tax paid motor fuels purchased and used. Invoices for tax paid motor fuels must be submitted with the application.

The following records must be kept to support refund applications:

- (1) Mileage records by vehicle;
- (2) Fuel records by vehicle;
- (3) Cubic yards of concrete mix delivered, by vehicle; or tons of compacted waste hauled, by vehicle; or tons of bulk feed or fertilizer hauled, by vehicle.

Statutory Authority G.S. 105-262; 105-446.5.

**.0516 NON-HIGHWAY, CITY/COUNTY, AND TAXICAB REFUNDS**

In order to obtain a refund of tax paid on motor fuels, the following refund applications must be filed:

- (1) Persons using tax paid motor fuels in other than licensed vehicles must file Form Gas. 1201.
- (2) Counties, municipal corporations, volunteer fire departments, county fire departments, volunteer rescue squads, "sheltered workshop" organizations recognized and approved by the Department of Human Resources, city transit systems and private non profit organizations transporting passengers under contract with or at the express designation of units of local government must file Form Gas. 1200.
- (3) Operators of taxicabs must file Form Gas. 1200B to obtain a refund for tax paid motor fuels used in transporting fare paying passengers.

The applications require an accounting of tax paid motor fuels purchased and used. Invoices for tax paid motor fuels must be submitted with the application.

Statutory Authority G.S. 105-262; 105-446; 105-446.1; 105-446.3.

**SUBCHAPTER 9H - SPECIAL FUELS TAX**

**SECTION .0100 - SPECIAL FUELS LICENSES**

**.0102 AMOUNT OF BOND OR IRREVOCABLE LETTER OF CREDIT REQUIRED**

The amount of bond or irrevocable letter of credit for special fuels suppliers shall be rounded to the nearest one thousand dollars (\$1,000.00). If the amount required is exactly between two one thousand dollar (\$1,000.00) increments, the amount shall be rounded to the higher of the two.

Statutory Authority G.S. 105-262; 105-449.5; 105-449.32.

**.0103 TYPES OF ACCEPTABLE BONDS**

The Motor Fuels Tax Division will accept surety bonds on Form Gas. 1212, furnished by the Division, executed by any surety company licensed to do business in this State. The Division will also accept bonds secured by the following types of collateral:

- (1) Certificates of deposit or cashier's checks, made payable to the taxpayer;
- (2) Negotiable U.S. Treasury bonds;
- (3) Negotiable U.S. Treasury notes;
- (4) Public School Facilities bonds;
- (5) Housing Finance Agency bonds;
- (6) General Obligation Bonds of the State of North Carolina or its political subdivisions; and
- (7) Revenue Bonds of the State of North Carolina or its political subdivisions with a rating of at least BAA or BBB.

Notes and bonds tendered as collateral must have a fair market value at least equal to 115 percent of the collateral required.

Statutory Authority G.S. 105-449.5; 105-449.32.

**.0105 IRREVOCABLE LETTER OF CREDIT**

The Motor Fuels Tax Division will accept an irrevocable letter of credit executed on the Department's Form Gas. 1220.

Statutory Authority G.S. 105-449.5; 105-449.32.

**SECTION .0200 - CONSIGNMENT: SALES INVOICES: TAX FREE DELIVERIES: METERS: MILEAGES**

**.0202 COMPANY OPERATED STATIONS: DELIVERY**

Special fuels transferred by a supplier to his company operated service stations is considered inventory, and tax does not accrue until sold, delivered or used.

Statutory Authority G.S. 105-449.16; 105-449.19; 105-449.32.

**.0203 COMMON STORAGE**

Suppliers selling special fuels at retail from a common storage tank at a supplier's company operated service station must have separate metered dispensers for highway and non highway use. The non highway dispenser must be marked "for non highway use only."

Statutory Authority G.S. 105-449.16; 105-449.32.

**.0206 RESELLER REQUIRED TO KEEP METER READINGS**

Resellers of special fuels must maintain records of totalizer meter readings showing the total gallons dispensed by pumps dispensing special fuels and by pumps dispensing non tax paid fuels.

Statutory Authority G.S. 105-449.10; 105-449.17; 105-449.32.

**.0207 MILEAGE RECORDS: INTRASTATE VEHICLES**

Users, bulk users, resellers and suppliers must maintain records of the total miles of each vehicle using special fuels and operating wholly within the state during the calendar quarter.

Statutory Authority G.S. 105-449.10; 105-449.32.

**.0208 REPORTING SALES AND DELIVERIES OF NON-HIGHWAY DIESEL**

Suppliers shall file a report and show a full accountability of special fuels. Non highway sales of diesel to users and bulk users must be listed separately by customer on the monthly supplier report if the users and bulk users have a motor vehicle propelled by diesel. Otherwise, these sales are to be included in a summary total of non highway diesel sales to customers not licensed with this Division.

Statutory Authority G.S. 105-449.17; 105-449.19; 105-449.32.

**.0209 BULK USERS: PURCHASES OF NON-HIGHWAY DIESEL**

Bulk users are not required to keep inventories or report bulk purchases of non highway diesel unless the bulk users have a motor vehicle propelled by diesel.

Statutory Authority G.S. 105-449.17; 105-449.21; 105-449.32.

**.0210 COMMON STORAGE NOT PERMITTED**

Bulk users and resellers shall not have common storage of tax free fuel for highway use and non highway use.

Statutory Authority G.S. 105-449.16; 105-449.19; 105-449.32.

**SECTION .0300 - PROPANE GAS**

**.0302 FUEL FROM CARGO SUPPLY TANK**

Propane gas suppliers using directly from their cargo supply tank shall report and pay special fuels tax and inspection fees based on the trucks storage tank water (shell) capacity, as follows:

<u>Tank Capacity</u>	<u>Miles Per Gallon</u>
1 thru 1,199 gallons	8 miles per gallon
1,200 thru 1,599 gallons	7 miles per gallon
1,600 thru 2,050 gallons	

6 miles per gallon
2,051 thru 2,999 gallons
5 miles per gallon
3,000 gallons and above
4 miles per gallon

~~The miles per gallon schedule is to be used to determine the tax liability only when propane gas is used from the cargo supply tank to propel a delivery truck. When a separate supply tank is connected to the engine of a motor vehicle, special fuels tax and inspection fees are due on the actual number of gallons of fuel placed into the tank.~~

*Statutory Authority G.S. 105-449.2; 105-449.16; 105-449.19; 105-449.32; 119-17; 119-18.*

#### **.0303 ODOMETER READINGS**

~~Propane suppliers reporting and paying tax on the mileage basis shall keep accurate records of the number of miles driven each month based on exact odometer readings. Propane gas suppliers using special fuels from separate supply tanks shall keep odometer mileage records for each motor vehicle operated.~~

*Statutory Authority G.S. 105-449.16; 105-449.19; 105-449.32.*

#### **.0305 REPORTING SALES AND DELIVERIES: PROPANE GAS SUPPLIERS**

~~Non-highway sales of propane gas to users and bulk users shall be listed separately by customer on the monthly supplier report if the users and bulk users have a motor vehicle propelled by propane gas. Otherwise, these sales are to be included in a summary total of non-highway propane gas sales to customers not licensed with this Division.~~

*Statutory Authority G.S. 105-449.17; 105-449.19; 105-449.32.*

#### **.0306 BULK USERS: PURCHASES OF PROPANE GAS**

~~Bulk users are not required to keep inventories or report bulk purchases of non-highway propane gas unless the bulk users have a motor vehicle propelled by propane gas.~~

*Statutory Authority G.S. 105-449.17; 105-449.21; 105-449.32.*

#### **SECTION .0400 - EXEMPTIONS: REFUNDS AND LOSSES**

##### **.0409 REFUNDS AND EXEMPTIONS**

~~The Special Fuels Act, consistent with the Gasoline Tax Act, has refund and exemption provisions for certain uses of tax paid special fuels.~~

~~Special fuels shall be accounted for in the same manner~~

~~and in conjunction with motor fuels as outlined in 17 NCAC 9G .0502 through 17 NCAC 9G .0509, 17 NCAC 9G .0514, and 17 NCAC 9G .0516.~~

*Statutory Authority G.S. 105-446; 105-446.1; 105-446.3; 105-446.5; 105-449; 105-449A.*

## **SUBCHAPTER 9K - GASOLINE, DIESEL AND BLENDS**

#### **SECTION .0100 - RESERVED FOR FUTURE CODIFICATION**

#### **SECTION .0200 - LICENSING**

##### **.0201 EXPORTER'S LICENSE**

~~A person who exports motor fuel from North Carolina and is not licensed as a distributor must have an exporter's license. To obtain an exporter's license, a person must meet the same licensing requirements as a licensed distributor.~~

*Statutory Authority G.S. 105-262; 105-449.65(a)(5); 105-449.69; 105-449.72.*

##### **.0202 LICENSED DISTRIBUTOR CONSIDERED TO BE LICENSED AS AN IMPORTER**

~~A licensed distributor is considered to have a license as an importer when the following apply:~~

- (1) ~~All motor fuel is purchased from an elective or permissive supplier; and~~
- (2) ~~the person reports, in the application for a license as a distributor, each state from which the distributor intends to import motor fuel.~~

*Statutory Authority G.S. 105-262; 105-449.65; 105-449.69.*

##### **.0203 NOTICE OF ADDITIONAL STATES**

~~A person who imports or exports from a state different from those listed on an application for license, shall give written notification to the Secretary of the name of such state.~~

*Statutory Authority G.S. 105-262; 105-449.69(d).*

##### **.0204 AMOUNT OF BOND OR IRREVOCABLE LETTER OF CREDIT REQUIRED**

~~The amount of motor fuel bond or irrevocable letter of credit shall be rounded to the nearest one thousand dollars (\$1,000). If the amount required is exactly between two one thousand dollar (\$1,000) increments, the amount shall be rounded to the higher of the two.~~

*Statutory Authority G.S. 105-262; 105-449.72.*

##### **.0205 TYPES OF ACCEPTABLE BONDS**

- (a) ~~The Motor Fuels Tax Division will accept surety~~

bonds on Form Gas 1212, furnished by the Division, executed by any surety company licensed to do business in this State. The Division will also accept bonds secured by the following types of collateral:

- (1) Certificates of deposit or cashier's checks, made payable to the taxpayer;
- (2) Negotiable U.S. Treasury bonds;
- (3) Negotiable U.S. Treasury notes;
- (4) Public School Facilities bonds;
- (5) Housing Finance Agency bonds;
- (6) General Obligation Bonds of the State of North Carolina or its political subdivisions with a rating of at least BAA or BBB.

(b) Notes and bonds tendered as collateral must have a fair market value at least equal to 115 percent of the collateral required.

Statutory Authority G.S. 105-262; 105-449.72.

#### **.0206 IRREVOCABLE LETTER OF CREDIT**

The Motor Fuels Division will accept an irrevocable letter of credit executed on the Department's Form Gas 1220.

Statutory Authority G.S. 105-262; 105-449.72.

#### **SECTION .0300 - RESERVED FOR FUTURE CODIFICATION**

#### **SECTION .0400 - PAYMENT AND REPORTING**

##### **.0401 REPORTING INFORMATION IN THE PROPER REPORTING PERIOD**

All motor fuels transactions shall be reported on the monthly motor fuels tax report for the month that the transaction occurred, as transactions that occur during a calendar month cannot be carried over to the next month's report.

Statutory Authority G.S. 105-262; 105-449.90.

#### **SECTION .0500 - REFUNDS**

##### **.0501 DOCUMENTING SALES TO THE UNITED STATES GOVERNMENT**

(a) The following alternatives may be used by distributors as a means of documenting, on their tax returns, sales of motor fuels to the United States Government that are exempt from the motor fuels tax:

- (1) Listing or computer run of sales to the U.S. Government; or
- (2) Sales invoice copies certified by the distributor; or
- (3) U.S. Government Tax Exemption Certificate, Form 1094.

(b) When listing or computer runs are used, distributors must retain copies of sales invoices to support the exemption claimed.

Statutory Authority G.S. 105-262; 105-449.105.

##### **.0502 SALES TO U.S. GOVERNMENT: REFUND FORM GAS 1206**

(a) The first section of form 1206 is to be completed by vendors that have sold tax paid motor fuels to the U.S. Government at a price that did not include the motor fuels tax. Copies of sales invoices must be submitted with the application.

(b) The second section of form 1206 is to be completed by U.S. Government agencies to secure refunds on the tax on motor fuels that were purchased at a price that included the motor fuels tax. Copies of purchase invoices must be submitted with the application.

Statutory Authority G.S. 105-262; 105-449.105.

##### **.0503 OFF-HIGHWAY REFUND APPLICATION INFORMATION**

The following information must be given on the application for refund of tax paid on motor fuels used for off-highway purpose:

- (1) Name of machinery or equipment in which motor fuels will be used and engine or motor number;
- (2) Type of storage equipment used for storing motor fuels used for highway and off-highway purposes and storage capacity;
- (3) If the applicant is a farmer, each kind of crop and number of acres under cultivation;
- (4) Make, type of vehicles, model and license number, if motor fuel is used in licensed motor vehicles from the same storage tank from which off-highway equipment is serviced;
- (5) Number of gallons of motor fuel on hand at the beginning of refund period and number of gallons on hand at the end of the refund period;
- (6) Number of gallons used for off-highway purposes; and if motor fuel is used from same storage to operate both licensed motor vehicles and off-highway equipment, the number of gallons used during the refund period in licensed motor vehicles.

Statutory Authority G.S. 105-262; 105-449.107.

##### **.0504 OFF-HIGHWAY REFUND INVOICE REQUIREMENTS**

An invoice for each purchase of motor fuels must be submitted with the application for refund for purchases made for off-highway use during the refund period. Invoices must show the date of purchase, name of both purchaser and seller, gallons purchased, price per gallon and amount paid. A daily, weekly or monthly statement of purchases of motor fuels is acceptable provided it is prepared by the seller, and shows all of the information on each purchase of motor fuels that is required on an individual invoice. Invoices and statements showing alterations or erasures are not accept-

able. If no claim was filed for the preceding refund period, an invoice or statement must be attached to substantiate inventory at the beginning of the refund period.

Statutory Authority G.S. 105-262; 105-107.

**.0505 OFF-HIGHWAY USERS WITH COMMON STORAGE FACILITIES**

No refund is due on motor fuel used to operate the engine of a motor vehicle licensed to travel on the streets and highways, unless otherwise provided by law. If motor fuel is used from the same storage tank from which licensed motor vehicles and off-highway equipment are serviced, a daily use record must be kept to substantiate the amount withdrawn for licensed motor vehicles or non-licensed equipment. These records are to be kept for three calendar years from the date the refund application was due to be filed.

Statutory Authority G.S. 105-262; 105-449.107.

**.0506 STATIONARY ENGINE MOUNTED ON A LICENSED MOTOR VEHICLE**

No refund is due on motor fuels used to operate a stationary engine mounted on a licensed motor vehicle, except concrete mixer vehicles, solid waste compacting vehicles, certain agricultural delivery vehicles and tank wagons, as defined by G.S. 105-449.107, if motor fuel is used from the same storage tank mounted on the vehicle for the purpose of operating both the stationary engine and the engine used to propel a licensed motor vehicle over the streets and highways.

Statutory Authority G.S. 105-262; 105-449.107.

**.0507 OFF-HIGHWAY USERS WITH SEPARATE TANKS**

If separate tanks are used for storage of motor fuels for highway and off-highway use, the seller must indicate on the invoices at the time of delivery whether the motor fuel is for highway or off-highway use.

Statutory Authority G.S. 105-262; 205-449.107.

**.0508 DEALERS DELIVERING FUEL INTO OFF-HIGHWAY EQUIPMENT**

Dealers of off-highway equipment powered by motor fuel are entitled to a refund on motor fuel placed into their equipment provided there is no charge for the fuel when the equipment is sold. If the motor fuel is sold, the purchaser is entitled to a refund on the motor fuel purchased and used.

Statutory Authority G.S. 105-262; 105-449.107.

**.0509 VEHICLES WITH SPECIAL MOBILE EQUIPMENT LICENSE**

A claimant operating a vehicle with a special mobile

equipment tag is not entitled to a refund on any fuel that is used in operating the motor vehicle on the streets and highway.

Statutory Authority G.S. 105-262; 105-449.107.

**.0510 REMOVAL OF LICENSE PLATE**

(a) In order to obtain a refund, a person may remove his license plates and surrender the plates to the Commissioner of Motor Vehicles, or his agents, or the Motor Fuel Tax Division, North Carolina Department of Revenue, for the period the vehicles will not be operating on the streets and highways.

(b) Any person requesting a refund on tax paid motor fuel used in motor vehicles on which the license plates have not been removed and surrendered will have the refund claim disallowed.

Statutory Authority G.S. 105-262; 105-449.107.

**.0511 MUNICIPALITIES AND CONTIGUOUS MUNICIPALITIES**

In order to define municipalities and contiguous municipalities, the Motor Fuels Tax Division will follow the North Carolina Utilities Commission Rule R2-69, which is incorporated by reference, and includes any future amendments. This Rule can be obtained free of charge from the Chief Clerk at the Utilities Commission.

Statutory Authority G.S. 105-262; 105-449.106.

**.0512 PROPORTIONAL REFUNDS: FORM GAS 1200C**

(a) Operators of concrete mixing vehicles, solid waste compacting vehicles, agricultural vehicles and tank wagons as defined by G.S. 105-449.107 must file Form Gas. 1200C to obtain a refund of tax paid motor fuels used in the operation of such vehicles.

(b) This application requires an accounting of tax paid motor fuels purchased and used. Invoices for tax paid motor fuels must be submitted with the application.

(c) The following records must be kept to support refund applications:

- (1) Mileage records by vehicle;
- (2) Fuel records by vehicle;
- (3) Cubic yards of concrete mix delivered, by vehicle; or tons of compacted waste hauled, by vehicle; or tons of bulk feed or fertilizer hauled, by vehicle.

Statutory Authority G.S. 105-262; 105-449.107.

**.0513 OFF-HIGHWAY, CITY/COUNTY AND TAXICAB REFUNDS**

(a) In order to obtain a refund of tax paid on motor fuels, the following applications must be filed:

- (1) Persons using tax paid motor fuels, in other than

(2) licensed vehicles, must file Form Gas 1201. Counties, municipal corporations, volunteer fire departments, volunteer rescue squads, "sheltered workshop" organizations recognized and approved by the Department of Human Resources, city transit systems and private non-profit organizations transporting passengers under contract with or at the express designation of units of local government must file Form Gas 1200.

(3) Operators of taxicabs must file Form Gas 1200B to obtain a refund for tax paid motor fuels used in transporting fare-paying passengers.

(b) The applications require an accounting of tax paid motor fuels purchased and used. Invoices for tax paid motor fuels must be submitted with the application.

Statutory Authority G.S. 105-262; 105-449.106; 105-449.107.

## SECTION .0600 - ENFORCEMENT AND ADMINISTRATION

### .0601 RECORDS OF EXEMPT SALES

To enable the Department of Revenue to identify the sales made to exempt purchasers of motor fuels, a licensed distributor shall provide such information on a quarterly basis. A licensed distributor may use its Quarterly Reconciling Report to provide the required information.

Statutory Authority G.S. 105-251; 105-252; 105-262; 105-449.61(c).

### .0602 RECORD-KEEPING REQUIREMENTS OF BULK-END USERS, RETAILERS AND USERS

To enable the Secretary or a person designated by the Secretary to prepare audits, bulk-end users, retailers and users of motor fuels must maintain for a period of three years, records as follows:

(1) Users:

- (a) All fuel receipts, highway and non-tax-paid;
- (b) Quarterly odometer readings, regardless of weight classification;
- (c) Purchase and disposition dates of fleet vehicles;
- (d) List of current vehicles by registered gross weight.

(2) Bulk-End Users:

- (a) All fuel receipts, highway and non-tax-paid;
- (b) Withdrawal statements of fuel from bulk storage facilities;
- (c) Quarterly odometer readings, regardless of weight classification;
- (d) Purchase and disposition dates of fleet vehicles;
- (e) List of current vehicles by registered gross weight.

(3) Retailers:

- (a) All fuel receipts and bills of lading;
- (b) Meter readings;

(c) Fuel availability schedules;

(d) Intrastate mileage records.

Statutory Authority G.S. 105-262; 105-449.121.

## SECTION .0700 - RESERVED FOR FUTURE CODIFICATION

### SUBCHAPTER 9L - ALTERNATIVE FUEL

## SECTION .0100 - RESERVED FOR FUTURE CODIFICATION

## SECTION .0200 - RESERVED FOR FUTURE CODIFICATION

## SECTION .0300 - TAX AND LIABILITY

### .0301 EQUIVALENT RATE FOR COMPRESSED NATURAL GAS

(a) When compressed natural gas is dispensed as a motor fuel the method of measurement is: one Gasoline Gallon Equivalent = 5.660 lb. of compressed natural gas.

(b) The current alternative fuel and inspection tax rate will be applied to compute the tax.

Statutory Authority G.S. 105-262; 105-449.136.

### .0302 UNBLENDDED KEROSENE AS ALTERNATIVE FUEL

Unblended kerosene is an alternative fuel.

Statutory Authority G.S. 105-262; 105-449.130.

## SECTION .0400 - PAYMENT AND REPORTING

### .0401 FUEL FROM CARGO SUPPLY TANK

(a) Alternative fuel providers using propane gas directly from their cargo supply tank shall report and pay alternative fuel tax and inspection tax based on the truck's storage tank water (shell) capacity, as follows:

Tank Capacity  
Miles Per Gallon

1 thru 1,199 gallons	8 miles per gallon
1,200 thru 1,599 gallons	7 miles per gallon
1,600 thru 2,050 gallons	6 miles per gallon
2,051 thru 2,999 gallons	5 miles per gallon
3,000 gallons and above	4 miles per gallon

(b) The miles per gallon schedule is to be used to determine the tax liability only when propane is used from

the cargo supply tank to propel a delivery truck. When a separate supply tank is connected to the engine of a motor vehicle, alternative fuel tax and inspection tax are due on the actual number of gallons of fuel placed into the tank.

Statutory Authority G.S. 105-262; 105-449.137.

**.0402 ODOMETER READINGS**

Alternative fuel providers reporting and paying tax on propane gas vehicles on the mileage basis shall keep accurate records of the number of miles driven each month based on exact odometer readings. Alternative fuel providers using propane from separate supply tanks shall keep odometer mileage records for each motor vehicle operated.

Statutory Authority G.S. 105-262; 105-449.137.

**.0403 REPORTING SALES AND DELIVERIES: PROPANE GAS SUPPLIERS**

Non-highway sales of propane gas to users and bulk-end users shall be listed separately by customer on the monthly Alternative Fuel Provider's Report if the users and bulk-end users have a motor vehicle propelled by propane gas.

Statutory Authority G.S. 105-262; 105-449.137.

**.0404 BULK-END USERS; PURCHASES OF PROPANE GAS**

Bulk-end users are not required to keep inventories or report bulk purchases of non-highway propane gas unless the bulk-end users have a motor vehicle propelled by propane gas.

Statutory Authority G.S. 105-262; 105-449.138.

**SECTION .0500 - RESERVED FOR FUTURE CODIFICATION**

**SECTION .0600 - RESERVED FOR FUTURE CODIFICATION**

**SECTION .0700 - RESERVED FOR FUTURE CODIFICATION**

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**TITLE 18 - SECRETARY OF STATE**

Notice is hereby given in accordance with G.S. 150B-21.2 that the Boxing Commission is developing rules to regulate Boxing in North Carolina. The Commission intends to adopt these Rules as Temporary Rules to become effective January 1, 1996 to govern rules regulating the Boxing Commission. The agency will subsequently publish in the Register the text of the rules it proposes to adopt as a result of the public hearing and of any comments received on the subject matter.

**Proposed Effective Date: April 1, 1996.**

**A Public Hearing will be conducted at 10:00 a.m. on December 4, 1995 at the Secretary of State's Office, 3rd Floor Conference Room, 300 N. Salisbury Street, Raleigh, NC 27603-5909.**

**Reason for Proposed Action:** *To enact recent legislation passed by the 1995 legislative session in Ratified House Bill No. 555.*

**Comment Procedures:** *Interested persons may present their views either orally or in writing at the hearing or mail comments to The Boxing Commission, Secretary of State's Office, 300 N. Salisbury Street, Raleigh, NC 27603-5909. All comments must be received no later than 5:00 p.m. on December 4, 1995.*

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**TITLE 19A - DEPARTMENT OF TRANSPORTATION**

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Transportation intends to adopt rules cited as 19A NCAC 02D .1101 - .1112.

**Proposed Effective Date: March 1, 1996.**

**A Public Hearing will be conducted at 10:00 a.m. on November 30, 1995 at the Transportation Building, Room 102, 1 South Wilmington Street, Raleigh, NC 27611.**

**Reason for Proposed Action:** *Pursuant to G.S. 136.28.4, the Department is adopting rules to administer the DBE-MBE-WBE Programs which are currently operational.*

**Comment Procedures:** *Any interested person may submit written comments on the proposed rules by mailing the comments to Emily Lee, Department of Transportation, P.O. Box 25201, Raleigh, NC 27611, within 30 days after the proposed rules are published.*

**Fiscal Note:** *These Rules do not affect the expenditures or revenues of state or local government funds.*

**CHAPTER 2 - DIVISION OF HIGHWAYS**

**SUBCHAPTER 2D - HIGHWAY OPERATIONS**

**SECTION .1100 - DISADVANTAGED BUSINESS ENTERPRISE, MINORITY BUSINESS ENTERPRISE, AND WOMEN BUSINESS ENTERPRISE PROGRAMS FOR HIGHWAY AND BRIDGE CONSTRUCTION CONTRACTS**

**.1101 PURPOSE**

(a) The North Carolina Department of Transportation shall ensure that Disadvantaged Business Enterprises (DBE) have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds.

(b) The North Carolina Department of Transportation shall ensure that Minority Business Enterprises (MBE) and Women Business Enterprises (WBE) have the maximum opportunity to participate in the performance of contracts financed with non-Federal funds.

Statutory Authority G.S. 136-28.4; 143B-348.

**.1102 DEFINITIONS**

For purposes of the rules in this Section, the following terms shall apply:

(1) Socially and economically disadvantaged individual means a person who is a citizen or lawful permanent resident of the United States and who is:

- (a) A Black American;
- (b) A Hispanic American;
- (c) An Asian-Pacific American;
- (d) A Native American;
- (e) An Asian-Indian American;
- (f) A Woman;
- (g) A member of another group or an individual found to be economically and socially disadvantaged by the Small Business Administration under Section 8(a) of the Small Business Administration Act, as amended [15 U.S.C. 637(d)];
- (h) A member of another group, or an individual found to be economically and socially disadvantaged by the North Carolina Department of Transportation.

(2) Disadvantaged Business Enterprise (DBE) means a small business concern, as defined pursuant to Section 3 of the Small Business Act (15 U.S.C. 632) and implementing regulations which is:

- (a) Owned and controlled by one or more socially and economically disadvantaged individuals;
- (b) A firm which has been found to be socially and economically disadvantaged by the Small Business Act under the 8(a) program; or
- (c) A firm which has been certified as socially and economically disadvantaged by the North Carolina Department of Transportation except that such term shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which has average annual gross receipts over the preceding three fiscal years in excess of fourteen million dollars (\$14,000,000) as adjusted by the Department for inflation.

(3) An Owned and Controlled Business means a business:

(a) Which is at least 51 percent owned by one or more eligible individuals, or in case of a publicly owned business at least 51 percent of the stock is owned by one or more eligible individuals; and

(b) Whose management and daily business operations are controlled by one or more of the eligible individuals who own it.

(4) Eligible Individual means a socially and economically disadvantaged individual as defined in this Rule on projects financed in whole or in part with Federal funds. On projects financed with non-Federal funds, eligible individual means a minority or woman individual as defined in this Rule.

(5) Eligible Firm means a firm owned and controlled by an eligible individual as defined in this Rule.

(6) An eligible manufacturer means a firm owned and controlled by an eligible individual that operates or maintains a factory or establishment which produces on the premises the materials or supplies obtained by the contractor.

(7) An eligible regular dealer means a firm that owns, operates, or maintains a store, warehouse, or other establishment in which materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be an eligible regular dealer, the firm must engage in, as its principal business and in its own name, the purchase and sale of products in question. A regular dealer in such items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns and operates distribution equipment. Brokers and packagers shall not be regarded as manufacturers or regular dealers within the meaning of this Rule.

(8) Minority means a citizen or lawful permanent resident of the United States who is:

- (a) A Black American;
- (b) A Hispanic American;
- (c) An Asian-Pacific American;
- (d) A Native American; or
- (e) An Asian-Indian American.

(9) Minority Business (MB) means a business firm which is owned and controlled by one or more minorities, except that such term shall not include any concern or group of concerns controlled by the same minority individual or individuals which has average annual gross receipts over the preceding three fiscal years in excess of fourteen million dollars (\$14,000,000) as adjusted by the Department for inflation.

(10) Woman means a citizen or lawful permanent resident of the United States who is female.

(11) Women Business (WB) means a business firm which is owned and controlled by one or more women, except that such term shall not include

any concern or group of concerns controlled by the same female individual or individuals which has average annual gross receipts over the preceding three fiscal years in excess of fourteen million dollars (\$14,000,000) as adjusted by the Department for inflation.

standards of eligibility as prescribed in the Code of Federal Regulations, 49 CFR 23.53.

*Statutory Authority G.S. 143B-348.*

**.1106 DECERTIFICATION**

(a) Each firm certified with the Department shall at all times comply with the standards of eligibility as prescribed in 49 CFR 23.

(b) In the event the Department finds a firm in non-compliance with the standards of eligibility, that firm shall be decertified and its name removed from the Disadvantaged/Minority Business Enterprise Directory.

*Statutory Authority G.S. 143B-348.*

**.1107 APPEALS OF DENIAL OF CERTIFICATION**

(a) Any firm which believes it has been wrongly denied certification or which believes it has been wrongly decertified may file an appeal of that denial to the Department's Director of Civil Rights, P.O. Box 25201, Raleigh, NC 27611, telephone 919-733-2300.

(b) The filed appeal must be received by the Director of Civil Rights within 20 calendar days of the notice of denial. Upon receipt of the appeal, the Director shall schedule a hearing for the firm with the Department's DBE Appeals Committee.

(c) If the denial of certification is upheld by the Appeals Committee, the firm may file a written appeal within 180 days of the initial denial with the U.S. Department of Transportation, 400 7th Street, S.W., Washington, DC 20590, telephone 202-336-1111, in accordance with the Code of Federal Regulations, 49 CFR 23.55.

*Statutory Authority G.S. 143B-348.*

**.1108 GOALS**

(a) For each highway or bridge construction project determined appropriate by the Department, a disadvantaged business enterprise goal or minority and women business enterprise goals shall be established. The goal or goals shall be prescribed in the project proposal as a percent of the bidder's bid price.

(b) The Contractor shall exercise all necessary and reasonable steps to ensure that eligible firms participate in at least the percentage of the contract as required by the project proposal.

*Statutory Authority G.S. 136-28.4; 143B-348.*

**.1109 COUNTING PARTICIPATION TOWARD MEETING THE GOAL**

(a) All bidders, at the time a bid proposal is submitted, shall also submit a listing of participation on the appropriate form, contained in the proposal, in order for the bid to be considered responsive. For a firm to be counted toward

*Statutory Authority G.S. 143B-348.*

**.1103 CERTIFICATION OF FIRMS**

(a) Any Disadvantaged Business Enterprise, Minority Business Enterprise, or Women Business Enterprise firms wishing to participate in the goals programs of the Department shall be certified by the Department.

(b) The Department will conduct a certification review after it receives a completed Schedule A and checklist which is available at no cost from the Civil Rights and Business Development Section of the Contractual Services Unit, P.O. Box 25201, Raleigh, NC, telephone 919-733-2300. The certification review shall be conducted in accordance with the Code of Federal Regulations, 49 CFR 23. The standards of eligibility shall be those prescribed by the Code of Federal Regulations, 49 CFR 23.53, which is hereby incorporated by reference including all subsequent amendments and editions. This publication is available at a cost of twenty three dollars (\$23.00) from the U.S. Government Printing Office, Superintendent of Documents, Mail Stop SSOP, Washington, DC 20402-9328, telephone 202-512-1800.

*Statutory Authority G.S. 136-28.4; 143B-348.*

**.1104 ANNUAL RENEWAL OF CERTIFICATION**

(a) Each firm certified as a Disadvantaged Business Enterprise, Minority Business Enterprise, or Women Business Enterprise shall renew its certification annually. The annual review shall be conducted in accordance with the Code of Federal Regulations, 49 CFR 23.

(b) In the event a firm fails to renew its certification within 15 months of the issuance of its most recent certification, that firm's name shall be removed from the Department's Disadvantaged/Minority/Women Business Enterprise Directory which is published monthly and can be obtained at no cost from the Division of Highways, P.O. Box 25201, Raleigh, NC 27611, telephone 919-733-2300.

*Statutory Authority G.S. 143B-348.*

**.1105 CHANGE IN OWNERSHIP OR CONTROL**

(a) At any time there is a change of ownership or control of a firm certified with the Department, that firm shall submit a revised Schedule A which is available at no cost from the Civil Rights and Business Development Section of the Contractual Services Unit, P.O. Box 25201, Raleigh, NC 27611, telephone 919-733-2300.

(b) The Department shall evaluate the firm using stan-

meeting the goal, the firm shall be certified by the Department as evidenced by a current letter of certification or by its listing on the current Disadvantaged/Minority/Women Business Enterprise Directory, which is published monthly by the department and is available at no cost from the Civil Rights & Business Development Section, P.O. Box 25201, Raleigh, NC 27611, telephone 919-733-2300.

(b) If a firm is determined to be an eligible firm and certified by the Department, the total dollar value of the participation provided by the firm shall be counted toward the goal. The total dollar value of participation by the certified firm shall be based upon unit or lump sum prices agreed upon by the prime contractor and the certified firm.

(c) The Contractor may count toward its appropriate goal a portion of the total dollar value of participation with a joint venture eligible under the standards of this Rule equal to the percentage of the ownership and control of the eligible partner in the joint venture.

(d) The Contractor may count toward its goal only the expenditures to the certified eligible firm that perform a commercially useful function in the work of a contract. An eligible firm is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing, and supervising the work involved. To determine whether an eligible firm is performing a commercially useful function, the Department shall evaluate the amount of work subcontracted, industry practices, and other relevant factors.

(e) A contractor may count toward its goal 60 percent of its expenditures for materials and supplies required to complete the contract and obtained from an eligible regular dealer, and 100 percent of such expenditures to an eligible manufacturer.

(f) A contractor may count toward its goal the following expenditures to eligible firms that are not manufacturers or regular dealers:

- (1) The fees and commissions charged for providing a bona fide service such as professional, technical, consultant, or managerial services and assistance in the procurement of essential personnel, facilities, equipment, or supplies required for the performance of the contract, provided that the fee or commission is determined by the Department to be reasonable and not excessive as compared to fees customarily allowed for similar services.
- (2) The fees charged for the delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by the Department to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- (3) The fees or commissions charged for providing

any bonds or insurance specifically required for the performance of the contract provided that the fee or commission is determined by the Department to be reasonable and not excessive as compared with the fees customarily allowed for similar services.

(g) For a given contract line item or contracts financed with non-federal funds, the Contractor shall designate the goal to which the total dollar value of participation awarded to a firm owned and controlled by a minority woman shall be credited. The total dollar value for such firms shall be credited to one goal only and shall not be split or duplicated between the Minority Business or Women Business goals.

(h) On projects funded entirely with non-federal funds, should the contractor submit with his bid submittal participation in excess of the goal(s) by an amount equal to or greater than one thousand dollars (\$1,000), then the Department will place on deposit for future use by the contractor the amount of participation in excess of the goal(s). Separate accounts will be maintained by the Department for minority and women goals. The contractor may accumulate excess participation for a period not to exceed 24 months.

Statutory Authority G.S. 136-28.4; 143B-348.

#### .1110 NON-ATTAINMENT OF GOALS

(a) When the low bidder fails to obtain the participation required to satisfy goals established in the project proposal, he shall submit information to demonstrate to the Department he has made sufficient reasonable good faith efforts to satisfy the goals. The submission shall be received by the Department on or prior to the date and time specified in the project proposal. The following factors will be evaluated by the Department prior to determining whether the contractor has demonstrated good faith efforts:

- (1) Whether the bidder attended any pre-bid meetings that were scheduled by the Department to inform eligible firms of subcontracting opportunities;
- (2) Whether the bidder provided written notice to a reasonable number of eligible firms that their interest in the contract was being solicited;
- (3) Whether the bidder followed up initial solicitations of interest by contacting eligible firms to determine with certainty they were interested;
- (4) Whether the bidder selected portions of the work to be performed by eligible firms in order to increase the likelihood of meeting the contract goals;
- (5) Whether the bidder provided interested eligible firms with adequate information about the plans, specifications, and requirements of the contract;
- (6) Whether the bidder negotiated in good faith with interested eligible firms not rejecting them as unqualified without sound reasons based on a thorough investigation of their capabilities;
- (7) Whether quotations were received from inter-

ested eligible firms but rejected as unacceptable without sound reasons why the quotations were considered unacceptable. For projects funded in whole or part with Federal funds, the fact that the DBE firm's quotation for the work is not the lowest quotation received shall not in itself be considered a sound reason for rejecting the quotation as unacceptable. Nothing in this Rule shall be construed to require the Contractor to accept unreasonable quotes in order to satisfy the goals.

(8) Whether the bidder made efforts to assist interested eligible firms in obtaining any required insurance;

(9) Whether the bidder specifically negotiated with subcontractors to assume part of the responsibility to meet the contract goals.

(b) In the event one bidder is the apparent low bidder on two projects within the same letting and located in the same geographic area of the state, as a part of the good faith effort, the Department shall consider allowing the bidder to combine participation in like goals programs as long as the overall goal value of both projects is achieved.

(c) In the event the apparent low bidder on a project funded entirely with non-federal funds fails to meet the goal(s) required by the proposal, he may as a part of his good faith effort, request the Department to consider the withdrawal of sufficient in-kind participation previously deposited by him in accordance with Rule .1109(h) of this Section to satisfy the goal(s) requirement.

(d) If the apparent low bidder fails to submit sufficient participation by eligible firms to satisfy the contract goals and upon determination by the Department based upon the information submitted that the apparent lowest responsive bidder failed to make sufficient reasonable efforts to meet the contract goals, the Board of Transportation may reject the bid.

(e) In the event the Board of Transportation does not award the contract to the lowest responsive bidder, the Board of Transportation may award the contract to the next lowest responsive bidder that can satisfy the Department that the contract goals have been met or demonstrated a reasonable good faith effort to do so.

Statutory Authority G.S. 136-28.4; 143B-348.

#### .1111 PERFORMANCE RELATED REPLACEMENT OF ELIGIBLE FIRMS

The Department may allow replacement of an eligible firm for the following performance related reasons:

(1) If an eligible firm listed by the contractor and submitted at the time of bidding does not perform in a satisfactory manner, the contractor shall make all necessary, reasonable efforts to replace the eligible firm with another eligible firm in the same category as the firm originally submitted.

(2) Any substitution of eligible firms after award of

the contract must be approved by the Department. The contractor shall submit any requests for substitutions through the Resident Engineer, and the request must provide the basis or reason for the proposed substitution.

(3) To demonstrate necessary, reasonable efforts, the contractor shall document the steps he has taken to replace eligible firms with other eligible firms. Such documentation shall include but not be limited to the following:

(a) Copies of written notification to eligible firms that their interest is solicited in subcontracting the work defaulted by the previous subcontractor or in subcontracting other work in the contract;

(b) Efforts to negotiate with eligible firms for specific subbids including at a minimum:

(i) The names, addresses, and telephone numbers of eligible firms that were contacted;

(ii) A description of the information provided eligible firms regarding the plans and specifications for portions of the work to be performed; and

(c) A statement of why additional agreements with eligible firms were not reached;

(d) For each eligible firm rejected as unqualified, the reasons for the contractor's conclusion;

(e) Efforts made to assist the eligible firms contacted, if needed in obtaining bonding or insurance required by the contractor.

(4) Failure of the contractor to demonstrate reasonable efforts to replace an eligible firm with another eligible firm shall be just cause to disqualify the contractor from further bidding for a period of up to six months after notification by certified mail.

Statutory Authority G.S. 136-28.4; 143B-348.

#### .1112 REPLACEMENT OF AN ELIGIBLE FIRM REMOVED BY DECERTIFICATION

The Department may allow replacement of an eligible firm under the following conditions:

(1) If the Department has approved a Request For Subcontract for a particular eligible firm, and that eligible firm is subsequently decertified by the Department, the Department shall not require the prime contractor to solicit replacement participation equal to the remaining work to be performed by the certified firm.

(2) If a prime contractor has a listed eligible firm in his low bid submittal and that firm is decertified prior to the Department approving a Request for Subcontract for the named eligible firm, the prime contractor shall be required to make a good faith effort in accordance with 19A NCAC 02D .1111(3) of this Section to:

(a) Replace the decertified firm with a certified firm; or

(b) Obtain replacement participation in other areas of the work.

Statutory Authority G.S. 136-28.4; 143B-348.

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**N**otice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Transportation intends to amend rules cited as 19A NCAC 03D .0517, .0549 and adopt 19A NCAC 03D .0551 - .0553.

**Temporary:** These Rules were filed as temporary rules effective November 1, 1995 for a period of 180 days or until the permanent rules become effective, whichever is sooner.

**Proposed Effective Date:** February 1, 1996.

**A Public Hearing** will be conducted at 2:00 p.m. on November 30, 1995 at the DMV Annex Conference Room, Room 201, 1100 New Bern Avenue, Raleigh, NC 27697.

**Reason for Proposed Action:** Amendments to and adoption of these rules are necessitated by window tinting legislation enacted in the 1995 Session of the General Assembly.

**Comment Procedures:** Any interested person may submit written comments on the proposed rules by mailing the comments to Emily Lee, N.C. DOT, PO Box 25201, Raleigh, NC 27611 within 30 days after the proposed rules are published.

**Fiscal Note:** These Rules do not affect the expenditures or revenues of state or local government funds.

## CHAPTER 3 - DIVISION OF MOTOR VEHICLES

### SUBCHAPTER 3D - ENFORCEMENT SECTION

#### SECTION .0500 - GENERAL INFORMATION REGARDING SAFETY INSPECTION OF MOTOR VEHICLES

##### .0517 DEFINITIONS

For purposes of this Section, these words and phrases shall have the following meanings, except in those instances where the context clearly indicates a different meaning.

(1) **Abbreviations:** Abbreviations used in these Rules shall have the following meanings:

- (a) CO - Carbon Monoxide,
- (b) G.V.W.R. - Gross Vehicle Weight Rating,
- (c) HC - Hydrocarbons,
- (d) PSI - Pounds Per Square Inch,
- (e) NOx - Nitrogen Oxides,
- (f) PPM - Parts Per Million,

(g) % - Percent,  
Ambient Air: That portion of the atmosphere surrounding human, animal and plant life.

(2) Authorized Station: An established place of business duly licensed by the North Carolina Division of Motor Vehicles to conduct inspection of safety equipment, exhaust emissions, and air pollution control devices as required by the inspection laws.

(3) Base: The place where a vehicle is most frequently dispatched from, garaged, serviced, maintained, operated or otherwise controlled. If any vehicle is located in or operated from a county participating in the safety emission program continuously for a period of 30 days, said vehicle shall be considered based within said county.

(4) Carbon Monoxide: (CO) A colorless, odorless, highly toxic gas that is a normal by-product of incomplete fuel combustion.

(5) Certified Inspection Mechanic: A person who has completed the required course(s), who has passed a written examination approved by the North Carolina Division of Motor Vehicles, and who has been issued an inspection mechanic license by the Division of Motor Vehicles.

(6) Crankcase Emissions: Air contaminants emitted into the atmosphere from any portion of the engine crankcase ventilation or lubrication system.

(7) Current Year Model: The production period of new motor vehicles as designated by the manufacturer in the calendar year in which the period ends. If the manufacturer does not designate a production period, the model year shall mean the 12-month period beginning January of the year in which production began.

(8) Diagnostic Equipment: Tools or machines used to diagnose engine performance.

(9) Emission: The act of a motor vehicle emitting into the atmosphere any air contaminants which may include carbon monoxide, hydrocarbons, or nitrogen oxides.

(10) Established Place of Business for Safety/Emissions Inspection: A permanent structure owned either in fee or leased by a licensee, which has sufficient space to test and inspect one or more motor vehicles for which an inspection sticker is being sought and to accommodate the office or offices of an authorized station to provide a safe place for maintaining the records and stickers of such authorized station, and at which location the business shall be open during normal business hours to conduct safety inspections and exhaust emissions tests and make available to authorized agents of the Division of Motor Vehicles all records and required equipment for examination and testing.

(11) Exhaust Emissions: Air contaminants emitted into

the atmosphere from any opening downstream from the exhaust parts of a motor vehicle engine.

(13) Exhaust Gas Analyzer: A device for sensing and measuring the amount of air contaminants in the exhaust emitted from a motor vehicle.

(14) Heavy Duty Motor Vehicle: A motor vehicle which is designed primarily for:

- (a) The transportation of property and which is rated at more than 8,500 GVWR.
- (b) The transportation of persons and which has a capacity of more than 12 persons.
- (c) Use as a recreational motor vehicle which is rated at more than 8,500 GVWR.
- (d) Use as an off-road utility vehicle.

(15) Hydrocarbons: A family of compounds containing carbon and hydrogen in various combinations found especially in fossil fuels.

(16) Inspection: The safety equipment or exhaust emissions inspection of motor vehicles required by G.S. 20, Part 2, Article 3A.

(17) Inspection Sticker: Sticker which when properly executed indicates that the vehicle to which it is attached has been inspected and found to meet the requirements of the inspection laws.

(18) Inspection Laws: G.S. 20, Part 2, Article 3A and rules duly adopted by the Commissioner of Motor Vehicles.

(19) Inspection/Maintenance (I/M): A strategy to reduce emissions from in-use motor vehicles by identifying vehicles that need emission related maintenance and requiring that such maintenance be performed.

(20) Inspection Period: The month during which the motor vehicle would normally be required to be inspected by G.S. 20-183.4C.

(21) License: Notwithstanding G.S. 20-4.01(17), the license issued by the Commissioner of Motor Vehicles which is required for a person to operate a safety equipment exhaust emission inspection station.

(22) Light Duty Motor Vehicle: A motor vehicle which is designed primarily for:

- (a) Transportation of property and which is rated at or less than 8,500 GVWR by the manufacturer; or
- (b) Use in the transportation of persons and which has a capacity of 12 persons or fewer.

(23) Light Transmittance Measuring Device or Light Meter or Unit or Device: A photometer capable of measuring the net transmittance of a window or windshield for light at 560 nm with a variance of no more than 20 nm.

(24) Multipiece Photometer: A photometer in which the light source and light detector are mechanically separate units that can be positioned on opposite sides of a fixed window or windshield.

(25) Net Transmittance: The luminous transmittance over the 560 nm with a variance of 20 nm wavelength range, including the effects of Fresnel (surface) reflections.

(26) Nitrogen Oxides: A gas formed in great part from atmospheric nitrogen and oxygen when combustion occurs under high temperature and high pressure, as in an internal combustion engine.

(27) Recreational Motor Vehicle: A vehicle which is designed primarily to provide temporary or permanent living quarters for travel, camping, or other recreational use.

(28) Registered Owner of a Vehicle: The individual, group of individuals, partnership, firm, company, corporation, association, trust, estate, political subdivision, administrative agency, public or quasi-public corporation, or any other legal entity in whose name the license has been issued and whose name appears on the registration for such vehicle.

(29) Revocation: Notwithstanding G.S. 20-4.01(36), the termination of a license issued by the Division of Motor Vehicles to a safety equipment exhaust emission inspection station.

(30) Section: The Enforcement Section of the Division of Motor Vehicles.

(31) Self-Inspector: A person, firm or corporation so designated by the Commissioner for the purpose of inspecting only those vehicles owned or operated by such person, firm or corporation.

(32) Standard: A standard of performance adopted in these Rules.

(33) Station: A place of business duly licensed by the Commissioner of Motor Vehicles to conduct inspections of motor vehicles as required by the inspection laws.

(34) Suspension of Safety/Emission License: The temporary withdrawal of a license issued by the Division of Motor Vehicles to a safety equipment exhaust emission inspection station for a definite period of time.

(35) Tampering: Rendering inoperative, or the intentional maladjustment of any device installed on a motor vehicle designed or intended to control the amount of emissions from a vehicle.

(36) Waiver: A document issued by the Commissioner of Motor Vehicles or his designated agent exempting a particular motor vehicle from the requirements of the emission inspection.

Statutory Authority G.S. 20-2; 20-39; 20-127; 20-183.2; 20-183.6(a); 20-183.7(a).

#### .0549 APPROVAL AND DISAPPROVAL OF VEHICLES

Vehicles shall not be disapproved for any reason other than those specified in 19A NCAC 03D .0533 through

03D.0545 03D .0553.

Statutory Authority G.S. 20-2; 20-39; 20-127; 20-183.2; 20-183.3; 20-183.6(a); 20-183.7(a).

## .0551 WINDOW TINTING

(a) All stations performing window tinting inspections shall have a light meter or photometer which has been properly tested and approved by the Commissioner of Motor Vehicles. Stations which do not have an approved light meter shall not inspect vehicles with applications of after-factory window tinting. Stations are not required to maintain a light meter in order to perform safety inspections on vehicles without after-factory window tinting.

- (1) The inspection mechanic shall determine if the vehicle has after-factory window tinting prior to beginning the inspection. The mechanic may use an automotive film check card or knowledge of window tinting techniques to determine if a vehicle has after-factory tint applied to any window of the vehicle.
- (2) If a station determines a vehicle has after-factory window tinting but does not have an approved light meter, the mechanic must inform the customer he is unable to perform the inspection. The station may not charge for any portion of the inspection.

(b) All windows with applications of after-factory window tinting shall be inspected with an approved photometer which is properly calibrated and functioning.

(c) Prior to performing a test on a vehicle, the mechanic shall test the photometer for accuracy by checking the calibration against a reference sample of glass provided by the manufacturer. If the photometer indicates the device exceeds the net light transmission by + or - three percentage points, the unit shall be considered out of calibration and may not be used until properly calibrated. The unit's digital display must also be checked to ensure all digital display segments are lit and properly functioning.

- (1) The reference glass sample must be clean and free of dirt prior to performing the calibration check.
- (2) If a reference glass sample has been broken or is missing, the test shall not be performed and the mechanic shall inform the customer he is unable to perform the inspection.
- (3) If a digital display segment is not functioning, the test shall not be performed and the mechanic shall inform the customer he is unable to perform the inspection. The unit may not be used until it is repaired.
- (4) The windows to be tested shall be clean and free of dirt or moisture.

(d) The test shall be performed according to the photometer manufacturer's recommendations.

(e) Window tint shall fail safety inspection if:

- (1) Any window on the vehicle with after-factory tint has a light transmittance of less than 32%.
- (2) The tint on any window is red, yellow, or amber.
- (3) The tint on the windshield extends more than five inches below the top of the windshield or is below the AS1 line of the windshield, whichever measurement is longer.
- (4) The light reflectance of a tinted window is not 20% or less.

(f) Window tinting on vehicles with after-factory window tint shall not be inspected if the vehicle is exempt from the window tinting restrictions under G.S. 20-127(c).

(g) The mechanic shall collect the fee as specified in G.S. 20-183.7(a) for performing the inspection.

(h) The fee for inspecting window tinting may only be charged for vehicles with after-factory tint applied. If the light transmission exceeds 65%, the vehicle shall not be considered to have after-factory tint and the mechanic shall not charge the fee as specified in G.S. 20-183.7(a).

(i) Standards for devices used to measure light transmittance through vehicle windshields and windows are as provided in this section. These standards include but are not limited to portable devices used within the State of North Carolina to measure light transmittance through vehicle windshields and windows pursuant to G.S. 20-127. These devices shall be provided with a standard reference sample and procedure for taking readings utilizing the reference sample. The device light source shall be mid-range in the visible spectrum (560nm +/- 20nm) and shall not emit in the ultraviolet and infrared portions of the electromagnetic spectrum.

(j) The standardization of glass reference samples shall be traceable to the National Institute of Standards and Technology (NIST).

Statutory Authority G.S. 20-2; 20-39; 20-127; 20-183.6(a); 20-183.7(a).

## .0552 PHOTOMETER DESIGN AND PERFORMANCE REQUIREMENTS

(a) Multi-piece photometers shall be designed to be operated by one person on front windows, roll-down and non-roll-down side windows, and rear windows with up to 1/4-inch glass thickness. The multi-piece photometer shall have a three-digit digital readout capable of displaying from 00.0% to 99.9% transmittance with a resolution to the nearest 1/10 of 1%.

(b) The multi-piece photometer shall incorporate an automatic alignment feature or positive alignment indication such that the alignment of the transmitter and receiver are accomplished either automatically by respective devices or through an electronic noise indicating proper alignment, a light indicating proper alignment, or a feature which prevents readings being taken without the device being properly aligned. The automatic field of view of the transmitter and receiver shall be large enough to provide a

stable and accurate reading of the true net transmittance of the measured window.

(c) All photometric devices shall maintain unit accuracy within  $\pm$  or  $\pm$  three percentage points of reference samples between ten and seventy percent net light transmission.

(d) All photometric devices shall have a repeatability of  $\pm$  or  $\pm$  one percentage point from reading to reading.

(e) If the unit's supply voltage falls below the usable operating range, the device shall produce a low battery indication or fail to perform testing. Accurate readings must not be affected by the unit's supply voltage. The unit's power supply shall be capable of producing a minimum of 200 readings before replacement or recharge.

(f) Photometric devices shall not be affected by light sources other than the unit's source light. In addition to physical light barriers such as felt covers, rubber gaskets, the photometer shall include some form of electronic filtration or cancellation of any stray or ambient light sources. Units with readings affected by outside stray or ambient light sources shall not be acceptable.

(g) Photometric devices shall not be affected by interference generated by electric equipment, tools, or lighting devices. Readings shall not fluctuate when close to operating electric motors or lighting sources.

(h) Operating humidity range shall be 0-100% non-condensing. Operating temperature range shall be zero to 110 degrees F.

(i) Photometric devices shall incorporate a means of compensating for temperature and humidity changes within the stated ranges of this Rule. Acceptable units shall be capable of demonstrating both accuracy and repeatability of transmittance readings throughout the operating temperature and humidity ranges under Paragraph (h) of this Rule.

(j) The multi-piece photometer's transmitter shall have a light source capable of providing a uniform intensity beam that can accommodate the alignment capabilities of the receiver. Multi-piece photometers shall incorporate a means of self-alignment or positive alignment indication that shall be accomplished when the source and detector units are placed on their respective surfaces of the glazing to be measured as described in Paragraph (a) of this Rule. The alignment shall be accurate enough to position the detector unit well within the uniform beam of the source. The result of this alignment feature shall be data that meets the accuracy and repeatability requirements of this Rule.

(k) Reference samples shall be glass with a warranted transmittance stability of at least one year. Reference samples shall provide a uniform surface reading at four points with a variation not to exceed one percentage point as measured by a calibrated spectrophotometer over an indicated range within 560nm with a variance of no more than 20nm. Reference samples shall be permanently labeled or inscribed with the manufacturer's name, address, and date of calibration. Manufacturers shall ensure replacement reference samples are available to the consumer within two working days in the event of damage or breakage.

(l) Photometric devices shall include an all segments

display option for testing the unit's LCD display segments. This test may be performed prior to each reading or through a separate test button.

(m) Photometric units shall incorporate devices which shall protect the light source and detector from direct contact with environmental elements, dust, grease, and other products commonly associated with automotive repair shops. These devices shall also prevent the user from directly touching either the light source or detector.

Statutory Authority G.S. 20-2; 20-39; 20-127; 20-183.6(a); 20-183.7(a).

#### .0553 PHOTOMETER COMPLIANCE

(a) All devices used within the State of North Carolina to measure light transmittance through vehicle windshields or other windows shall as a minimum meet the requirements of Rule .0552 of this Section before being approved for use in enforcing state inspection laws and for law enforcement use throughout the state.

(b) Manufacturers must submit units for independent laboratory testing at a laboratory designated by the Commissioner prior to approval.

(c) Fees for testing shall either be reimbursed to the Division of Motor Vehicles by the manufacturer or directly to the laboratory by the manufacturer as directed by the Commissioner.

Statutory Authority G.S. 20-2; 20-39; 20-127; 20-183.6(a); 20-183.7(a).

\* \* \* \* \*

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Transportation intends to adopt rules cited as 19A NCAC 06B .0401 - .0417.

Proposed Effective Date: March 1, 1996.

A Public Hearing will be conducted at 10:00 a.m. on December 5, 1995 at the Transportation Building, Room 150, 1 South Wilmington Street, Raleigh, NC 27611.

Reason for Proposed Action: Pursuant to G.S. 136-44.36, the Department is adopting rules to administer the Rail Industrial Access Program which is currently operational.

Comment Procedures: Any interested person may submit written comments on the proposed rules by mailing the comments to Emily Lee, Department of Transportation, P.O. Box 25201, Raleigh, NC 27611, within 30 days after the proposed rules are published.

Fiscal Note: These Rules affect the expenditure or distribution of State funds subject to the Executive Budget Act, Article 1 of Chapter 143.

**CHAPTER 6 - DEPUTY SECRETARY - TRANSIT,  
RAIL, AND AVIATION**

**SUBCHAPTER 6B - PUBLIC TRANSPORTATION  
AND RAIL PROGRAM**

**SECTION .0400 - RAIL INDUSTRIAL ACCESS  
PROGRAM**

**.0401 DEFINITION OF PROGRAM**

For purposes of this Subchapter, the following definitions shall apply:

- (1) The term "Rail Industrial Access Program" or "RIAP" means the Department of Transportation program which provides funding to cover a portion of the costs of constructing or rehabilitating railroad industrial access tracks to serve a new or expanded industry.
- (2) "Department" means the North Carolina Department of Transportation.
- (3) "Grantee" means the entity which receives a RIAP grant from DOT.
- (4) "Project" means the construction of a spur track and related facilities under the RIAP.

*Statutory Authority G.S. 136-44.36; 143B-350(f) and (g).*

**.0402 IDENTIFYING INFORMATION**

Information related to RIAP may be obtained from:

Director, Rail Division  
N.C. DOT  
P.O. Box 25201  
1 South Wilmington Street  
Raleigh, NC 27611  
Telephone 919-733-4713.

*Statutory Authority G.S. 136-44.36; 143B-350(f) and (g).*

**.0403 FUNDING RECIPIENTS**

The following organizations shall be eligible to apply for Rail Industrial Access Funding:

- (1) Municipal and county governments;
- (2) Non-profit or for-profit community development organizations;
- (3) Railroads; and
- (4) Industries.

*Statutory Authority G.S. 136-44.36; 143B-350(f) and (g).*

**.0404 ELIGIBLE COSTS**

Costs eligible for RIAP funding are as follows:

- (1) Site preparation, including grading and drainage;
- (2) Track construction;
- (3) Switches; and
- (4) Grade crossings and signals.

*Statutory Authority G.S. 136-44.36; 143B-350(f) and (g).*

**.0405 INELIGIBLE COSTS**

Costs which are not eligible for RIAP program costs are as follows:

- (1) Engineering;
- (2) Relocation of utilities;
- (3) Acquisition of rights of way; and
- (4) Rail dock.

*Statutory Authority G.S. 136-44.36; 143B-350(f) and (g).*

**.0406 APPLICATION**

Candidates for RIAP funding shall complete and submit a funding application to the Department of Transportation. Copies of the application may be obtained from:

Director, Rail Division  
North Carolina Department of Transportation  
P.O. Box 25201  
1 South Wilmington Street  
Raleigh, NC 27611  
Telephone 919-733-4713

*Statutory Authority G.S. 136-44.36; 143B-350(f) and (g).*

**.0407 COUNTY AND CITY CERTIFICATION**

An applicant shall provide a certified copy of the resolution of support from the county and city government (if applicable) to the Department. An interim letter of support may be accepted pending receipt of a formal resolution.

*Statutory Authority G.S. 136-44.36; 143B-350(f) and (g).*

**.0408 REQUIRED EASEMENT CERTIFICATIONS**

A property easement certification shall be provided by the applicant with the completed application that provides written assurance that all required easements have or will be obtained.

*Statutory Authority G.S. 136-44.36; 143B-350(f) and (g).*

**.0409 INDUSTRY CERTIFICATION**

The industry shall certify that it will provide the jobs and rail traffic (carloads) indicated in the project application.

*Statutory Authority G.S. 136-44.36; 143B-350(f) and (g).*

**.0410 APPLICATION EVALUATION**

The Department shall evaluate the following when recommending rail projects to the Board of Transportation for approval:

- (1) Employment created in first two years;
- (2) Capital investment in first two years;
- (3) Annual rail traffic;
- (4) Whether the project is located in a county designated as distressed by the North Carolina Department of Commerce as defined in G.S. 143B-

437(b) or is eligible to receive Appalachian Regional Commission funding;

(5) Whether the project is served by a shortline railroad; and

(6) Impact on local or regional income or economic development.

Statutory Authority G.S. 136-44.36; 143B-350(f) and (g).

#### .0411 ALLOCATION OF FUNDING

(a) After evaluation of public benefits, including new employment and capital investment and funding available, the Department may award up to a maximum 50% of total project costs. Except as provided in Paragraph (b) of this Rule, a project shall receive no more than 20% of the annual budgeted funding for the RIAP in any fiscal year.

(b) The North Carolina Board of Transportation may approve funding above the maximum for individual projects based on the following criteria:

- (1) Comparison of project costs, benefits, and grantee resources; and
- (2) Availability of funding.

Statutory Authority G.S. 136-44.36; 143B-350(f) and (g).

#### .0412 PROCUREMENTS

All procurements shall be handled as follows:

- (1) Procurements shall be conducted through formal, competitive bidding;
- (2) Prior to advertising for bids, the Grantee shall submit the request for bids to the Department for review and approval;
- (3) The Grantee shall solicit bids from at least three firms;
- (4) The Grantee shall submit to the Department a certified tabulation of the bids received and a recommendation for bid award;
- (5) The Department shall review and approve the bid prior to the execution of a contract between the Grantee and the selected bidder. The Grantee shall submit the following information when requesting bid approval:
  - (a) Bid list;
  - (b) Copy of proposed contract;
  - (c) Certified tabulation of bids results;
  - (d) Copy of signed bid submitted by the recommended bidder; and
- (6) After the Department approves a contract award, the Grantee shall submit a copy of the executed contract to the Department.

Statutory Authority G.S. 136-44.36; 143-129; 143B-350(f) and (g).

#### .0413 REQUESTS FOR REIMBURSEMENT

(a) The Grantee may submit requests for reimbursement to the Department no more than once a month.

(b) The Grantee shall submit monthly progress reports.

(c) The Grantee shall submit invoices to the Department at the following address:  
Grants Administrator  
Public Transportation and Rail Divisions  
North Carolina Department of Transportation  
P.O. Box 25201  
Raleigh, NC 27611

The Grantee shall submit invoices in the same format and detail as cost items appear in the project bid and construction contracts.

(d) The Grantee shall indicate on invoices the total costs for the invoiced period and specify the current amount due.

(e) The Department shall examine requests for reimbursement to verify that costs are necessary to accomplish the project and within the scope of the project as described in the approved project budget.

Statutory Authority G.S. 143B-350(f) and (g).

#### .0414 RETAINAGE

The Department may withhold a retainage of 10 percent of the approved payment amount until the project is completed and accepted and the final audit has been conducted.

Statutory Authority G.S. 143B-350(f) and (g).

#### .0415 OWNERSHIP AND MAINTENANCE RESPONSIBILITY

(a) Once constructed, all rail industrial access tracks shall be owned by the Grantee or by the industry served.

(b) After construction, the track owner shall be responsible for maintaining the project tracks.

Statutory Authority G.S. 136-44.36; 143B-350(f) and (g).

#### .0416 REPORTING REQUIREMENTS

The grant recipient shall report to the Department as follows:

- (1) After each of the first two years following completion, the grant recipient shall provide information verifying the industry's employment as indicated in the project application and industry certification;
- (2) For the first five years following project completion, the grant recipient shall provide verification of the industry's rail use as indicated in the project application and industry certification.

Statutory Authority G.S. 136-44.36; 143B-350(f) and (g).

#### .0417 REPAYMENT

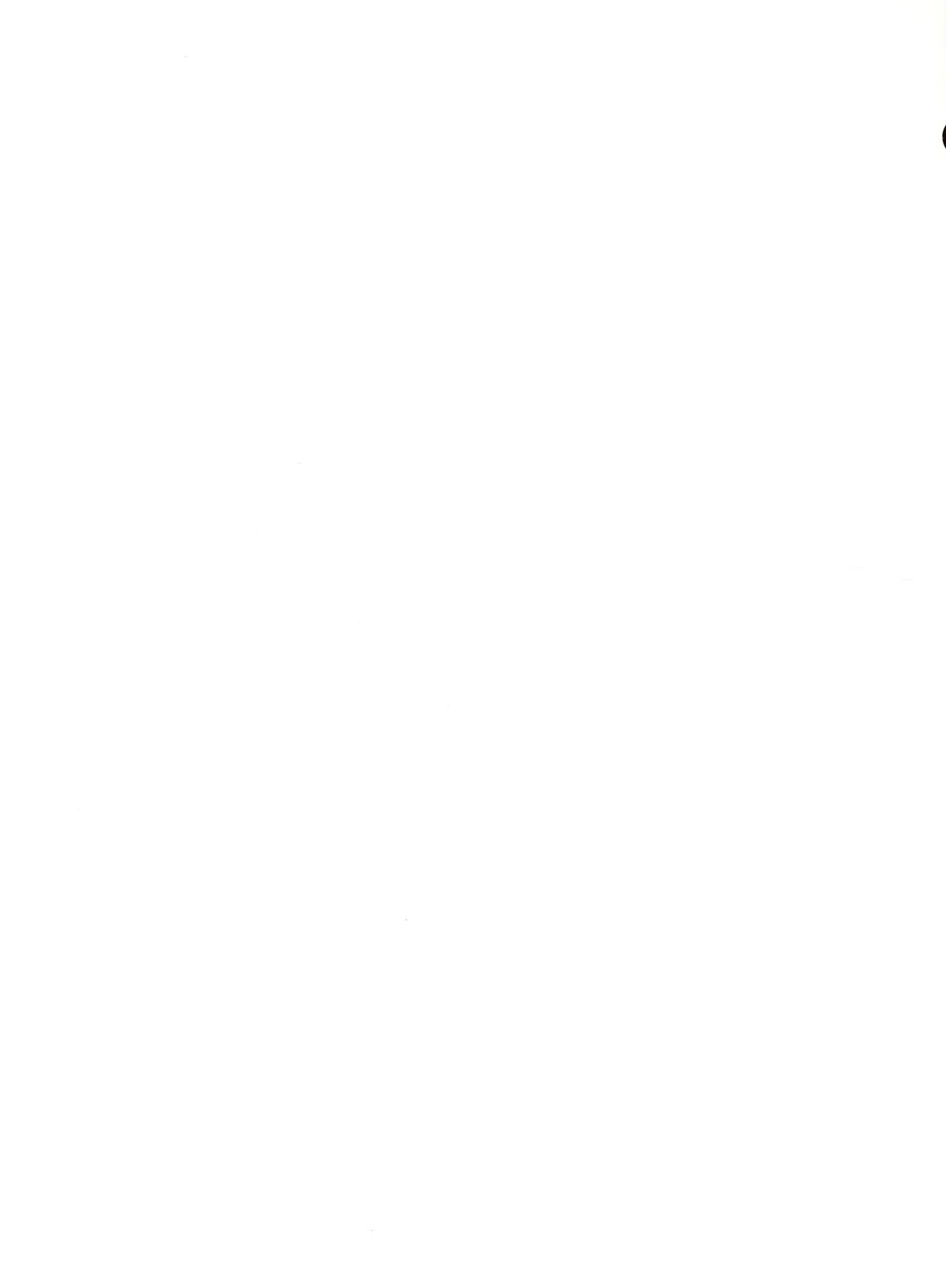
(a) If the project tracks are abandoned, relocated, or sold without a grant assignment, the track owner shall repay the Department its contribution to the cost of construction and materials less depreciation.

(b) The Grantee may be required to repay the Department

if:

- (1) During the first five years rail use falls below the goal levels specified in the industry certification;
- (2) Job goals (as specified in the industry certification) for the first two years are not met.

*Statutory Authority G.S. 136-44.36; 143B-350(f) and (g).*



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